PROCEEDINGS

MS. MYERS: Why don't we go ahead and get started. I will turn my microphone on just so you can hear me a little bit better. We are not going to use the handheld mike because there's just five of you, but I would ask that you speak up to make sure that Marcie can get down everything you say for the record.

I think I know everybody here, but my name is Juanita Myers. I'm the rules coordinator for the Unemployment Insurance Division.

Susan Harris is with me who also works in the UI policy unit and is assisting me on the rules and doing a wonderful

job, because there's a lot of work to get done.

In the back row is Alena Perez who is here from the -- she's the manager of the experience benefit rating charging unit, and she's here to answer any questions that you have on that.

And then Marcie Johnson is our court reporter.

And just for the record, if we could ask you to go around and introduce yourselves.

MR. SEXTON: Dan Sexton; Washington State Association of Plumbers, Pipe Fitters, and Sprinkler Fitters.

MR. DOOLEY: Tom Dooley with the Association of Washington Businesses.

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MR. TUVEY: I'm Dale Tuvey with United Claims

Management.

MS. CRONE: Pamala Crone, and I'm a lobbyist representing three organizations here today: The Northwest Women's Law Center, the Washington State Coalition Against Domestic Violence, and the Unemployment Law Project.

MR. NICHOLS: I'm Joel Nichols. I'm an attorney in private practice in Everett, representing primarily claimants and unemployment law insurance.

MS. MYERS: Okay. Thank you very much. I apologize for all the confusing e-mails about this meeting. We normally don't expect a foot of snow in Olympia, Washington.

(Whereupon a stakeholder joined the proceedings.)

Jim, we are asking if people can sit in the first couple of rows just so we don't have to use microphone for the audience members. And if you want to introduce yourself

for the record, we're just getting started.

MR. TUSLER: Jim Tusler of the Washington State Labor Council, AFL-CIO.

MS. MYERS: Thank you.

At the meeting on Monday I think we had seven people attend that one, and we went just a little bit over three hours, I think. So we are hoping that moving it to 1:00 will still give us sufficient time to get through

everything. But I do appreciate you coming out in this lovely driving whether. It shows you're committed to the rules.

I'm going to go ahead and go through the rules.

Oh, first let me do a little housekeeping. The rest

rooms are out this door and around the corner to the left. You will need to punch that code, 143, on the door to get into the rest room. If you need to get a soda or snacks, they are in the room right through here.

I'm going to go through the rules. A lot of these rules are just minor housekeeping changes, and I'm not going to discuss those because the statute numbers were changed, and we have adopted some new WACs. So some of the changes are simply incorporating the new statute numbers and the new WAC numbers, so they are technical changes, housekeeping in nature, and they don't require us to have to go through those.

Then after each section I will open it up for comments. And if you will just raise your hand when you want to be recognized, and I will point to you. And if you do, state your name again when you begin your comments so that Marcie

can get it for the record. Okay?

We are going to go ahead and start with the emergency rules. And the first several pages are simply housekeeping changes. You can see the sections that are underlined are

simply showing that some of these rules only apply to claims with an effective date prior to January 4.

Just to back up a little bit, this was the first time that we have had a law that was implemented that our adjudicators need to keep both sets of statutes running concurrently because it's based on the effective date of the claim. So someone who filed their application for unemployment benefits last week would be under the old law, the previous law on quits and discharges and job search

requirements. And people who filed starting this week are under the new law. So usually in the past the amendments have been made based on the separation date, but that's not what occurred here. It is based on a claim effective date.

So if somebody, say, quit their job clear back in October, but they just now applied for unemployment benefits, they fall under the new statute because it is based on the claim effective date. Similarly, somebody who had an open claim already and quit or discharged after this week or later would fall under the old law. So it's not separation date. It's claim date.

So on several of these rules you will see we had to keep the rule in effect, but we just added language saying the rule only applies to claims with an effective date prior to January 4, 2004. And then we would be repealing those probably in a little over a year when we should not have any

more people with those claim effective dates any longer.

The first rule I do want to talk briefly about is on the bottom of page 3 of these emergency rules, "Reasonably prudent person defined." This is the standard that the department has used for many years. And it's been in our policy, and it's developed through case law, but we have never had it in the rule before. And we are just adding it here for clarification purposes, but it's not a change from the standard we've used in the past. It's associated -- it's a person with common sense. It's the standard we use. Would a reasonably prudent person have behaved this way under these same conditions. And we look at that when we look determining whether the individual had cause for

quitting or whether they took reasonable steps to preserve their job. We use the reasonably prudent person standard.

Any questions about that?

The next page, there are two rules that are substantive changes. Some of these in this section we are simply readopting it into a new number just to make it -- the WACs sorted by chapter as opposed to fall under a heading of substantive rules or interpretive rules.

MR. SEXTON: Sorry to interrupt. Dan Sexton. I think it's probably your intention, but when there's changes from the draft emergency rules that we might be familiar with to --

MS. MYERS: Point those out.

MR. SEXTON: -- whatever we are calling these, I guess, the emergency rules, could you point those out?

MS. MYERS: Certainly. Thank you.

MR. SEXTON: Thank you.

MS. MYERS: Well, two rules that we've added since you saw the draft emergency rules, the draft rules that were sent out on December 17, are on page 4 in the middle of the page, WAC 192-110-200.

You will recall that we had a lot of discussion in the previous meetings as to whether the unemployment rate when it drops to 26 weeks would fluctuate back up to 30 weeks based on the unemployment rate or whether that would stay at 26 weeks. The commissioner after receiving input from -- well, Senator Honeyford and others has determined that the most appropriate reading of the statute is that once the unemployment rate hits 6.8 percent, the maximum benefits

payable will be reduced to 26 weeks and remain at 26 weeks, regardless of the future unemployment rate.

And just one other thing and then I will open it up. And then also we are using, based on our previous discussions, we are going to be using the three-month seasonally adjusted total unemployment rate, which is the same rate that we use for triggering on and off extended benefits.

Tom.

MR. DOOLEY: Juanita, the three-month seasonally, if I remember correctly, was something that a number of the stakeholders agreed with back at the first stakeholder

meeting.

MS. MYERS: Correct.

MR. DOOLEY: I just want to reiterate that the Association of Washington Businesses is still very solidly supportive of the SATR and not some other version of that.

The only other comment I would make to where the commissioner has landed with regard to the permanency versus variability is that in order to avoid any confusion in the rules side, is there a possibility of adding some words regarding "permanently"? Because it seems as open as the statute, you know, kind of was and may lead to some problem if there's not -- the decision of the commissioner is not fully implemented in the rule.

MS. MYERS: Okay.

MR. DOOLEY: Something like permanently reduced to 26 months.

MS. MYERS: Okay.

Other comments?

MR. SEXTON: Well, I guess I might as well pipe up here. I think I probably made my objections to this known and clear the other day, Monday, in Olympia in Tumwater, but

I will reiterate here that I think we were all -- "we" being everyone on the other side of the fence from business or management -- was caught off guard and not aware of the letter that I know of from Senator Honeyford or from business requesting the change or the interpretation. We see it as a change. We see it as a change from what we thought had been agreed to -- what we thought had been agreed to and voiced at the previous meetings and previous

hearings, you know, and so angry letters followed. We are all pretty upset and quite displeased with this change. And so I think we would strongly object to "permanent" being put in there.

I think -- I would think and hope that this point in this issue, regardless of the commissioner's decision, is still to be decided.

MS. MYERS: Okay. Quite Frankly, whichever way the department had ruled on this, we would foresee litigation in the future to determine -- have a court rule on what the statute actually says. So whichever way the department had ruled -- I think if we had said it was variable, then we could have been challenged by business. If it's dropped permanently to 26 weeks, we certainly anticipate some challenge from labor or from Layman Advocates or Law Project or somebody. I mean, we recognize that, simply because there are two interpretations of the statute.

MR. DOOLEY: You know, I think what Dan was referring to in terms of agreement was the first part that I mentioned, which was the three-month seasonally adjusted total. I don't think there was ever any agreement as to whether the 30 to 26 was permanent or not. We did agree that if the department was heading down the path that it was going to be adjustable that the seasonally adjusted was the most appropriate.

But the business community has remained steadfast in its position that this legislation was to trigger a permanent reduction in the number of weeks, and we stated that in numbers of letters to the department. And being

that this is the commissioner's extension in a rule from the department, we would urge her to put that -- her decision into the rule.

MS. MYERS: So noted.

MR. SEXTON: If I may, perhaps to clarify, my understanding or my belief was that -- I think those of us who did not submit letters probably thought that this issue had been settled and was not going to be changed. And we were unaware of the letters and the decision and the change -- and this change. And so, you know, clearly if our voices weren't raised in letters or on that point previous to seeing this it's because we didn't think it was an issue.

MS. MEYERS: Thank you.

Any further comments? Okay.

The next section is also a new section, 192-110-210, "Claim cancellation." And that was not in the draft rules that were distributed for review. And this came in response to some questions raised by our staff. There is nothing in the law preventing an individual from cancelling a claim at any time. They can cancel and refile.

The confusion that came up is, for example, say somebody applied in October and they had quit their job, and we had ruled that they had quit with good cause under the statute in effect at that time. And then they said, "Well, wait a minute. I just found out that if I waited and filed in January, I would have had a higher weekly believe amount. I would like to cancel my claim and refile in January." Well, it may be that under the new voluntary quit statute their separation was no longer with good cause under the new

law. And so what we have a put in here is that that eligibility decision becomes void, and we will redetermine their eligibility for benefits based on the law that applies to the effective date of their claim.

And we tell people this -- we've drafted in a script a new desk aid that we have given to staff so when somebody calls in and asks to cancel a claim, we make them aware of what the ramifications are. We can't tell them whether they would be denied or allowed. We can make them aware of what

the different laws are for discharges. We can make them aware of it and say you may want to refer to it because it could make a different in their eligibility. Because there's no point in filing a new claim if they would be

denied benefits under the new statue.

MR. TUSLER: Jim Tusler; State Labor Council.

Juanita, then would you believe -- does the department have the responsibility to notify the customer, the unemployed worker, just as what you have said, that they carry the burden of saying, "You realize your claim won't be readjudicated"? And if they don't, what happens?

MS. MYERS: Well, they do have the responsibility of doing that. If for some reason they don't, I suppose they could say, "Well, I want to cancel again and go back because if I had known about this, I wouldn't have changed."

But it is pretty standard because there's not just that one option that we give them because there's other things that come into play too. Because depending on which quarter they use, they could have a combined wage claim. They could have other options that could include wages from other

states. So there's a variety of options we discuss with people when they cancel a claim. Yes, we do -- in our script we have drafted -- well, we send it out to all our intake workers. When somebody wants to file a claim, here's the script they read them, and it does give them the

information about the impact of cancelling their claim. Tom.

MR. DOOLEY: You mentioned that there would be situations that a claimant would want to nullify their current claim and go into the new law system.

MS. MYERS: Yes.

MR. DOOLEY: What would that be?

MS. MYERS: Sometimes their weekly benefit amount is

higher. For example, say their current base year only has some part-time work, but they worked full time the last quarter of what would be their new benefit year, it could increase their weekly benefit amount. That would be the primary reason, the difference between the weekly benefit amount.

MR. DOOLEY: So the last quarter of '03.

MS. MYERS: No. It would be the second -- third quarter of '03.

MR. DOOLEY: I got you.

MS. MYERS: The last quarter of their base year, the first four of the last five.

MR. TUVEY: I'm going to take this opportunity to register my continuing opposition to the department's interpretation that the claimant can cancel a claim at any time. I think that's incorrect and poor public policy

25 decision. Because it basically works in one direction to

1 the claimant's benefit for no apparent reason.
2 For example, if a person is disqualified on their old
3 claim -- and maybe it's a fraudulent situation and they
4 asked to have their claim dated in the next quarter -- and
5 all of a sudden now they confess to whatever the reason was,
6 it's no longer a fraud situation. It changes dramatically
7 the claimant's eligibility and amount of overpayments and
8 all kinds of things.
9 And it only ever works in one direction. It's always
10 to the claimant's advantage. That's not equitable. It's a
11 good way to skirt the denial.
12 And the fact that there's going to be different rules

in effect before and after January 4, or whenever you filed your claim -- a person could have filed their claim clear back in March or April 2003. "Well, I want to cancel my claim because it's a new rule, and now I'm not going to be disqualified." I think that's wrong. A person ought to be able to live with the results and the consequences of their actions in filing a claim when they do take their eligibility, whether it's an allowance or denial, and let it happen. You shouldn't get a second bite of the apple just because it's more advantageous for you. That's not what the system is designed to do.

MS. MYERS: Thank you.

And who had a comment over here?

Pam Crone.

MS. CRONE: I just wondered if I could get a copy of the script you are using.

MR. NICHOLS: And I had a point of clarification. It's my understanding that when a claimant cancels his or her claim, they're responsible, if they have received benefits, for repaying the department for those benefits they have received.

MS. MEYERS: That's absolutely correct. And they are taken off the top. For example, if you have received $2,000 of payment on your new claims, you would claim each week but you wouldn't actually start getting money until we recoup the $2,000.

MR. NICHOLS: And that will remain to be the case?

MS. MYERS: Certainly. People aren't going to be able to double claim.

MR. NICHOLS: So they have to really take that into consideration. I don't think claimants willy-nilly cancel claims in order to take benefit changes in the law.

MS. MYERS: Very commonly, a reason for a claim cancellation is someone who applied for unemployment benefits and all they got in their search was their waiting week. And then later they went back to work. And then they are unemployed again, and so they don't want to go back off of that old weekly benefit amount. Even though the benefit

year is still good, they could qualify for a higher one. And so while they qualified for their waiting week, they would have to do another waiting week if they anticipate

another term of unemployment. We get a lot of claim cancellation for those, but we do get them for other reasons too.

MR. TUVEY: Excuse me. On the same topic, are there any either court or commissioner's decisions or other authority for the department's position in this regard?

MS. MYERS: I believe there are commissioner's decisions, but I will double check and get them to you.

MR. TUVEY: Or more appropriately, court decisions or other things that give the authority on it. So I think it's beyond what is there.

(Whereupon two stakeholders joined the proceedings.)

MS. MYERS: Could I have the last two individuals who came in introduce yourselves for the record.

MS. GREINER: Yes. My name is Lynn Greiner, and I'm the director of the Unemployment Law Project.

MS. BACIGALUPO: Gina Bacigalupo with NECA.

MS. MYERS: The next rule to talk about briefly is on page 5 on the notice to employer rule. Much of that rule is similar to what we had last time, and it's actually the same as what went out in the draft. But the language we have

added is under (1)(b) the small "i" and double "i" where we are going to presume a person has potentially disqualifying separation if when they apply for benefits if they have a job situation that was fewer than seven weeks ago, we will still send a notice to the employer just because we need to find out from that employer if there in fact was a quit or a discharge that the claimant isn't telling us about because

it's potentially disqualifying for a period of time. And then the next section, if the effective date is January 4, 2004, or later, we will do that if it's been less than ten weeks, because the qualification period on misconduct for claims filed this week and later is ten weeks. And so we will send that notification to the employer. It's just a notice that the claim was filed and asking the employer to let us know if there's any potentially disqualifying separation, if it was other than a lack of work.

The difference from the previous not from the draft rules that are not out, but from the existing rule is (3). As you may actually recall from our previous meetings, in the new statute when an individual voluntarily quits work for certain reasons, primarily the biggest chunk of those are what we would consider deteriorating working conditions -- there's the worksite move; there's the worksite safety issues; illegal activities; change in work

that affects their religious or moral beliefs. The law

provides that in those cases the charges all go to the separating employer if the person was separated -- if that separating employer is a base year employer, the last employer, and a contribution-paying employer.

So when an individual applies for unemployment benefits, we ask another new question. Basically asking -- well, we have always taken their work history. But if the the claimant indicates that their next to the last job -- well, if they quit for any of these reasons, or if their next to last job is a quit for the current employer, we enter a code in our computer that generates a notice to the

employer that says, "You may be liable for 100 percent of the benefits on this claim because this is what the claimant said his reasons were for quitting." So it gives them the intention that the employer is probably going to want to respond. Because I know a lot of times some employers don't respond to notices to the employer. It's a separate letter that alerts them they could be charged for 100 percent.

Then after the decision is made for the eligibility for benefits if the person is found eligible, for example, because they quit because of worksite safety issues, then the experience rating unit will send a notice to the employer that they are, in fact, being charged 100 percent for benefits being paid on that claim.

The next few rules are simply housekeeping changes.

They are not substantive changes.

MR. TUVEY: Can I stop you again? Knowing full well that 065 is a housekeeping piece and it's just moving and replacing a WAC, just something for the department's consideration, I know it's very small, but we've gotten some commentaries from employers in terms of the use of the word -- in Section 1 (1)(a) and (1)(b) regarding the use of the word "may" instead of "will" be mailed. Because in most of those circumstances if the department does know those things it will do that. So rather than have that be a passive thing, it should be a "will."

MS. MYERS: Where does it say "may"?

MR. TUVEY: There are three.

MS. MYERS: Three.

MR. TUVEY: The one in number 1, the one in (a), and

the one in (b).

MS. MYERS: Okay.

MR. TUVEY: It refers to "will" everywhere else except in those three areas. And the department usually does mail it to the employer's representative, if they know that there is a representative. So sorry about taking us off course.

MS. MYERS: That's perfectly all right.

Most of next few changes are simple housekeeping changes correcting staff numbers.

MR. TUVEY: Can I do one more housekeeping piece?

MS. MYERS: Certainly.

MR. TUVEY: WAC 192-130-080, the procedure for separation issues.

MS. MYERS: Yes.

MR. TUVEY: In subsection (4) there is a reference "after the end of the ten-day period and."

MS. MYERS: Okay.

MR. TUVEY: It's kind of duplicative of the previous subsection. The previous subsection covers the "after the ten-day period, but before the decision has been made," and this is just within 30 days. This is (4). So, I mean, if you just struck the words "after the end of the ten-day period" and just left it as, "If if department receives information from the employer within 30 days following the mailing of a decision" --

MS. MYERS: Okay. Any other comments before we move on?

The substantive rules that I'm going to go ahead and start talking about begin on page 11 of the emergency rules.

The changes to "Leaving work to accept a bona fide job offer" are simply a cleanup. We did add in Section (5) just a phrase at the end simply because it was an oversight when we wrote the rule the first time.

The law says that the person has to leave one job a for a bona fide job, which is defined as covered employment.

And we had indicated that that included jobs covered by this state or another state. And we neglected to include the federal government, which includes the railroad workers.

MR. TUVEY: Which section are you on?

MS. MYERS: I'm on Section -- page 11, 192-150-050.

MR. TUVEY: What about the others?

MS. MYERS: Well, they are all housekeeping issues. Do

you have comments on them?

MR. TUVEY: Yeah, I do.

MS. MYERS: Okay.

MR. TUVEY: Well, let's look first at -- well, there's 192-130-080.

MS. MYERS: Okay.

MR. TUVEY: The last paragraph (5). There's another one of those "may" or maybe it should be "shall." And I guess I just want to -- you know, it's -- if you receive information after the end of the 30 days after you've requested it, it "shall" be considered a request for relief of benefit charges, rather than "may."

MS. MYERS: Okay. We will look at that.

MR. DOOLEY: And then under 192-140-070, If you report that you are not able to work or are not available for work or do not work whether you are available for work, and it

says, "and do not provide details." I think that should be "or." Any of those ought to be sufficient to result in

disqualification.

MS. MYERS: Okay.

MR. TUVEY: And then there's another one 192-140-075 where -- and, again, this is -- if you don't demonstrate that you're actively looking for work and it says "and provide details." It should be "or."

Then 192-140-090 -- this is maybe a little more substantive. It talks about exceptions where the person would not be required to participate in reemployment services. And the first one says if you are a member in good standing of a full referral union -- I see no problem

with that -- are attached to an employer. Then it says in the last one, (c) "Within the previous year have completed or are currently schedulted for or participating in similar services."

I can certainly envision a situation where it would be appropriate for someone to go through, you know, a class or some type of assistance more than once in a given year. It just -- it just doesn't seem like that gives the department the flexibility to work with somebody who needs more help than maybe they think they do.

MR. DOOLEY: Not to jump at issues, but in 080 there's another one of those issues.

MR. TUVEY: Oh, there is. I may have missed one.

MR. DOOLEY: In 080 and (1) if we are going to be

consistent with looking at the list, there's another "and" at the end of that last at the front.

MR. TUVEY: Then in that same section, 140-090, there's a number (4), "Justifiable cause."

The first one is, "Your illness or disability or that of a member of your immediate family." I'm going to suggest that the phrase be added "that requires your personal presence." Just because somebody -- they have a sick relative, that shouldn't be good cause. But if they have a member of the family that requires their personal presence, that's another thing.

And under (b) it says, "Your presence at a job interview scheduled with an employer."

MS. MYERS: Okay. Before you go on. Do you have a comment, Dan?

MR. SEXTON: I can -- I could wait until he was finished.

MR. TUVEY: Well, I'm finished with that section.

MS. MYERS: Okay.

MR. SEXTON: It was a little hard to follow all that. But the first "and/ors" I would object to. You know, I think the language there is pretty clear. And the -- I have lost it now, but "and" does not supply the details, something to that effect. I'm not looking at it right now. I think that's pretty clear, and that covers every situation

so that the department did not lock itself into something, a hard, fast rule that could not have any variables to it. I

think the language here is pretty clear and should cover every situation.

MS. MYERS: Thank you.

MR. DOOLEY: In order to clarify, with all do respect, I think the thing, Dan, that --

MR. SEXTON: Where's that at?

MR. DOOLEY: Well, there's three different areas: 070, 075, and 080. And what you just argued for was for flexibility. And one of the things that "and" doesn't give you in this thing is flexibility. Each one of those scenarios should be a separate and distinct reason why the department can disqualify.

If you reported that you are not actively seeking work, that's one; do not report whether you made an active search for work, that's two; not report complete job search details, that's three; and you don't provide -- so, in essence, you would have to do all four of these things with

the "and" in order to be disqualified. And what we are saying is each and every one of those things is a separate thing.

I mean, we've done this in the legislature a lot; "and" and "or" mean a lot of things. "Or" gives the department a lot more flexibility in terms of living within the

legislative intent of the job search changes that were made that if you don't report accurately your job search activities, that should be a distinct and separate activity to deny benefits. And having an "and" in those three sections, it forces the department to be rigid and say, "Well, you met three out of four, but because you didn't

meet the fourth one, we can't deny it." So I would suggest that the department probably has more flexibility with an "or" in there rather than with an "and."

MS. MYERS: Pam.

MS. CRONE: I just want to respond to the suggested changes that Dale just made on WAC 140-090. I think the suggestions go beyond housekeeping and the purposes that you made in the rules here and are not necessary to implement the new legislation. So I would strongly object to the previous being added and to follow-up on the qualifications when one can be excused on the basis of the illness of a member of your immediate family.

MS. MYERS: So noted.

Anything else?

Yes, Dale.

MR. TUVEY: I forgot how far it was that you were along, but I think I have a couple more. I'm looking at

192-140-100.

MS. MYERS: Okay.

MR. TUVEY: And at the end of the first paragraph, I don't really have a good suggestion for the language here, but I think it's a topic I think you should look at. It says, "If you have provided the department with sufficient information to contact the employer, benefits will not be denied unless the employer establishes by a preponderance of evidence that you were discharged for misconduct connected with your work."

Okay. That's one situation. If the employer agrees that, in fact, there was a discharge, then the burden of

proof is on them, and I have no problem with that. But if the employer said, "Wait a minute; they weren't discharged; the person abandoned their job" or quit for some other reason, you have not given yourself an out to disqualify a person in that situation where, you know, they may have quit for a reason that's not good cause or some other -- the only contingency that's covered there is if, in fact, it was really adjudicated as a discharge. And I think there needs to be some sort of distinction, and I don't really have a language suggestion there.

MS. MYERS: Okay.

MR. TUVEY: And then down in 192-140-200, "What happens if I certify that I am not able to or available for work?" I think that in at least Sections (1) and (2), the paragraph of (c), "The information supplied clearly supports this

finding," I think is redundant. If the person has stated that they were not available for work and were not able to work, I don't see what more you need. You have got their statement. They have signed it or at least certified to it on the telephone system, and so I just don't -- I think that this is -- just has lack of clarity as to why you would have that in there.

And then under paragraph (4) there, it says, "This denial is for a specific period of time, which is the week or weeks for which you specifically indicate you are," quote, "'ineligible' for benefits."

So I doubt that they are, you know, indicating that they are ineligible for benefits if they don't intend to claim. So it maybe, you know, the denial is for a specific

period, week or weeks which you didn't intend to claim.

And I guess both in -- I don't know. In the next one, (5) and in the next paragraph or the next section, 192-140-210, the last sentence says the same, "Any denial of benefits under this section will be issued without delay."

I guess I'm not quite sure what the need for that is in that hopefully all not eligible allowances will be issued without delay. And it simply gives somebody more things to argue about, "Well, I think there was too much delay." I just don't see the need for it.

MS. MYERS: Let me clarify the reason, though, for it.

These two are in there. These two rules here apply to individuals who are in continued claim status. They have

been paid in the past and are continuing to claim. We are required to either pay benefits or make a decision about suspending benefits by the end of that week in which they claim. And that is the old O'Brien (phonetic) decision.

When somebody initially applies for unemployment benefits, of course the decisions can take longer because there's more fact-finding involved, but it just clarifies in letting them know that these decisions will not be subject to that potentially 30-day or six-week, whatever, decision-making period.

On continued claims, we either pay them conditionally if we haven't made a decision, or we issue a denial by the end of that week in which they file a claim.

MR. TUVEY: I understand. It seemed to be redundant and not necessary, but that seems to be -- but that's that.

The next -- let's see. How far --

MS. MYERS: I was going to start on the next page, 150-050, so hold your comments on the next page.

Dan.

MR. SEXTON: Aside from, you know, maybe some of Dale's comments, I think what Pam commented on, some of the earlier comments that, you know, it sounds like more than just housekeeping. This sounds like substantial changes. If the

department, you know, considers any of those changes, could we see those in writing? Could those be sent out in writing to the stakeholders because I think they're some big changes.

MS. MYERS: Tom. And then Pam.

MR. DOOLEY: Not to make additional work for the

department, but, isn't -- just processwise, these are draft preliminary permanent rules; is that correct?

MS. MYERS: These are emergency rules.

MR. DOOLEY: I mean, we are going over the emergency rules. They are already adopted.

MS. MYERS: Correct.

MR. DOOLEY: We are using the emergency rules as a baseline kind of draft for permanent rules.

MS. MYERS: Yes.

MR. DOOLEY: So it is completely appropriate that when those rules are open for amendment for people to discuss every aspect of those rules, right?

MS. MYERS: I will have to look at the scope. I need to go back and read again the CR-101, which is the preproposal statement of inquiry to see what the scope was that I said I would cover in those rules.

So they're beyond the scope of that notice, Pam, is correct. We would have to do another rule making process. But I don't know. I think I wrote it fairly broadly, but I

will double check all those comments.

MR. DOOLEY: The other thing is that workwise going through the process, I support Dan's request as well, that -- and I think this will happen in the normal course of the process. When you draft up your Preproposal 102, that will have the same kind of highlighting and strikeout and add as if it was a piece of legislation. Is that not correct?

MS. MYERS: Correct. But I think Dan's asking to see it before we get to the actual filing of those proposed rules.

MR. TUVEY: That's the way you draft it, and you'll have something prior to that.

MS. MYERS: Yes, certainly.

Pam was next.

MS. CRONE: Actually Joel was next.

MR. NICHOLS: Yes. And to respond to Dale Tuvey's comment about 192-140-200 (1)(c). I don't think that that language is redundant. I think it is beneficial to the department.

For example, when a claimant inadvertently hits the wrong button on the telephone. They want to call and say, "I was available for work. I hit the wrong button." That's additional information that the claimant is providing that doesn't support their statement when they push the wrong button on the telephone. So I think it's beneficial to the

department.

And that's just one example. It's beneficial to the department to have all the information necessary in order to make the right determination.

MS. MYERS: Who had a comment next?

MR. SEXTON: I don't know if this is necessary or not. But, you know, as far as changes requested, you know, I think a lot of work has gone into what's here before us. And there's been a lot of ideas tossed out here that may or may not be good ideas and may or may not be supported by those of us in the room and other organizations, you know. So I thought it would be, you know, a good idea if the department was thinking about making some of these changes or considering some of these changes, that we could see it

in writing before you did that.

MS. MYERS: Certainly. Dale, did you have another comment?

MR. TUVEY: A couple things. I suppose as long as the rules are open for change, they ought to be open to change and not limited to what sections the department thinks ought to be changes.

MR. SEXTON: I agree.

MR. TUVEY: So, you know, if there are ways to improve them, I think they ought to be made.

In terms of Joel's comment about information supporting

the finding, the department makes the decision based upon

the information they have at the time. If they need to get additional information, they are free to make a decision. It isn't talking about limiting the department considering information. It only says that -- I think it says that by eliminating or deleting it, it says that if the claimant in fact states that they weren't available for work or they didn't look for work or whatever, that ought to be sufficient. That is clearly supporting the finding it. Doesn't limit what the department can consider in any way. So it was just a small comment.

MS. MYERS: Thank you.

I need to move on to the voluntary quit rules if we are going to get done before 5:00 today.

The first section I already talked about briefly is "Leaving to accept a bona fide job offer."

The only changes, as you can see, are the new statute numbers and the addition of the terms "or the federal

government" in (5) which is just written to include the railroad workers. That certainly is covered. They have their own unemployment coverage under federal law, but we did have a situation come up last year where they quit a job to go to work for the railroad.

The next section, 192-150-055, leaving work because of illness or disability. The new statute requires that an

individual who separates because of illness or disability must terminate their employment and give up their right to be reinstated in the same or similar position. We have included that language in this rule for claimants with an effective date of January 4, 2004, or later.

Now, we have been verbally told and received an e-mail from the US Department of Labor that this is a conformity issue from them. We asked that they get their letter to us as soon as possible, but they have not yet done so. So the department is not proposing any legislative remedy until we get the actual letter or unless we get the actual letter from the Department of Labor specifying what the actual conformity issues are and what type of remedies they are seeking from the department. Until or unless the legislation is amended, the department is certainly bound to administer the law as it is written now.

And so we will talk in just a few minutes about another conformity issue, and we have a way to implement that section of the law. But this one, the law is fairly clear that that person has to give up their -- they have to actually separate from employment to be eligible for unemployment benefits.

MR. DOOLEY: Juanita, in regards to the 150-055 and the conformity issue and the request of the Department of Labor, we have commented a couple times in letters in regards to

our belief that this is not an issue of eligibility but availability. Have you couched the commentary to the Department of Labor in that context as opposed to denying eligibility?

MS. MYERS: We didn't contact them. They contacted us. And so the notice that there was a potential conformity issue wasn't one we called and said -- we did ask the Department of Justice if there was potential liability to the state under the Americans with Disabilities Act or any

other similar federal legislation if we condition somebody's eligibility for unemployment benefits on their giving up their return rights. We haven't had a response from the Department of Justice. The notice from the Department of Labor was unsolicited. They simply notified us by e-mail about this issue and another issue.

MR. DOOLEY: It was very clear, I guess, during the session and as a result of the discussions in the legislative process that that section was specifically intended to ensure that someone who is not available for work, they are not able and available for work because they have return rights, not receive unemployment insurance benefits, not as an eligibility issue, but because of the requirement -- the broader requirement in the law that they have not made themselves available for work.

MS. MYERS: Okay. But just to clarify, if somebody

applied last week under the previous law, if they were not able and available for unemployment, they wouldn't be eligible for benefits anyway.

What could happen is, for example, they could do work but perhaps not their current job and the employer doesn't have anything else for them. If they can do other work and that other work is available in the labor market, that is the only condition under which we would pay those individuals now.

MR. DOOLEY: Obviously there was a circumstance, I'm not aware of them, but there must have been circumstances where people on Family Medical Leave were receiving unemployment insurance benefits.

MS. MYERS: I'm not aware of any.

MR. DOOLEY: And that was what the issue was intended for, that there were people that had reversion rights to a specific job that were receiving unemployment benefits under a voluntary quit, and as a clean up of the voluntary quits section, that addition was made to prevent that from ever happening again.

MS. MYERS: And I don't know of anybody on Family Medical Leave that received benefits.

But you are correct. There are people who received benefits, very few, but we wrote about 85 in the last year where an individual was eligible for -- determined eligible

for benefits because they could do work and they were

seeking work, but their previous employer had to hold their job for them under other state or federal regulations for a period of time.

Now, if in the interim that individual can go out and look for other work and is willing to do so and is able to do so, we will, in fact, pay those. So I think we are saying the same thing.

MR. DOOLEY: All that is required by this statute is that that person terminate that opportunity to revert. If that's what they are going to do, we have no problem with that. If they are going to look for other work, not from the previous employer where the previous employer is holding a position mandatorily for that individual, that individual should not be receiving benefits if there's a job. It just prevents them -- the employer is getting charged for benefits when they are holding a job open for this

individual.

MS. MYERS: I understand.

MR. DOOLEY: So it's not an eligibility, it's an availability issue. And that's what the provision was trying to prevent.

MS. MYERS: Based on their initial comments, that is the gist of DOL's objections. But, again, we will certainly share the conformity issues when we receive it, so we can

all see it. Because they haven't pinned down particularly what their problem with the statute is. They have told us --

MR. DOOLEY: Right.

MS. MYERS: We have got the first conformity issue

letter, which we will talk about in just a few minutes. But they keep promising this one, but then they say, "We are adding more information to the letter." And things trickle down slowly from the federal government.

MR. DOOLEY: But in your issues for potential rule making, you referred to, whether it was an e-mail or it's the original transmission, about the original conformity issue. And it was almost all directed towards eligibility and not availability, which is why I'm making the point that maybe some communication from the department to DOL about the intention of the statute would be appropriate about the eligibility -- or the availability and not the eligibility issue to see if that quells their problem.

MS. MYERS: Lynn, you had a question?

MS. GREINER: I just wanted to know about the time frame when you expected to hear from the Department of

Labor. I know it's postholidays, but you are hoping before too many decisions get issued --

MS. MYERS: Certainly.

MS. GREINER: Are you going to track the issues and

then revisit them?

MS. MYERS: They will be easy to track because we've got all new issue codes for all these new statutes, so we will be able to find them. Because we're doing, as you will recall, the governor order that we do a study of the impact of the voluntarily quit changes. That is due next year. So we have assigned new issue codes for every one of the ten voluntary quit reasons. And then additionally for each one of those things we are adding a reason code that would tell

us under the old law what we would have allowed or denied, so we can then not just track the number of denials, but the difference that would have made. So it's a little more complex.

MR. DOOLEY: And one of the reasons for that is that they never tracked these questions as an individual activity. They were a bulk group of codes.

MS. MYERS: Right. Under our previous practice, we had all the voluntary quits -- we had a separate allowed decision, but all the denials were lumped together under one denial. So we couldn't tell people how many were denied for this reason or mandatory transfer or for whatever reason. We couldn't tell what reason it was. So now all of these new issue codes are both allow and deny issue codes and reasons attached to tell whether we would have allowed or denied it under the old statute or the prior statute. So we

will have reams of data at some point.

Next section, 192-150-060. Similar language is added to that section and the new (8) as we have discussed. Just a requirement under the new law, and we will certainly revisit this issue depending on when we received the conformity letter and what it says.

And I'm sorry, Lynn. To respond to your question, we don't know when they are going to get it to us. They have promised almost weekly that it's coming shortly because we really want it to get here before session so we could share it. Because certainly the employers are interested if there's a conformity issue, and legislature wants to know if there's a conformity issue, and the department wants to know

if there's a conformity issue in time to fix it as opposed to -- but we will keep you informed of what we hear shortly.

Jim.

MR. TUSLER: Point of clarification. It says, "And waive reinstatement rights to the same or similar position." What happens in a situation where -- how can you require a claimant to waive their rights prior to them possessing those rights? The court says this was a -- you are a whistle blower protected by federal law. You choose to remove yourself. And through a court case, the National Labor Relations Board says you were part of an organizing campaign. You have a right to return to that job. Please

respond to that.

MS. MYERS: Well, I think I would just say at this point the decision as to whether somebody is eligible at the time they file a claim. And at that point I would assume that if they have been separated that they don't have return rights.

Now, if the court later orders return rights, that doesn't change the decision that was made at the time. You know, at the time they applied for unemployment benefits they say, "No. They fired me. I'm appealing the firing. But they discharged me, or I was forced to I quit," or for whatever reason. At that time then we would consider them separated. The fact that a court later orders the employer to reinstatement them wouldn't terminate their eligibility for benefits if they, in fact, went back to work for that employer.

MR. TUSLER: If I could respond. In many of those

situations there's no job to return to. We go through that a lot. The department has said you waived your rights. There's no job to go back to. The business closes. There's a number of reasons why there's no bona fide job to go back to. Certainly similar when they're separated, what happens then?

MS. MYERS: I would think that if there's no job to go back to, then the person doesn't have return rights. If a

business is closed or moved, then that's not going to have a determination on their eligibility. But all of these decisions are fact driven. I can't tell you now how the department would rule on any situation simply because it

would depend on a variety of facts based on that individual. But I do not believe that the fact that the individual at the time of application doesn't have any return rights, then they would be potentially eligible depending on what the reason was for the separation. The fact that a court later orders their reinstatement doesn't void out that decision. Because usually that court decision comes sometime after the eligibility decision. We are behind but we are not that far behind.

MR. SEXTON: Juanita, can I follow up on Jim's question? I'm just wondering if you can explain to me why that's necessary. The "waive reinstatement rights to the same or similar position," why is that necessary? It's not statute. I know it's not statute.

MS. MYERS: Well, I can't explain why it was put there. I know Tom explained --

MR. SEXTON: I know it's in the statute. Why is it

necessary to have it right there? Is it just for clarification?

MR. DOOLEY: Because those are the rules dealing with disability and illness. It's a natural place to put the

statutory reference, which is simply all the department's doing here. I mean, there was an addition to the disability requirement in the statute, and the department is just merely adding that provision to the rules that they used to have for disability and illness as another category of issue.

MS. MYERS: Okay.

The next several sections are just primarily

housekeeping changes. The language added to 192-150-085 just adds the requalification language surrounding misconduct and gross misconduct that the requalification is ten weeks as opposed to seven weeks.

Any questions about those next couple sections?

If not, we will look at 192-150-110. And these are the new rules that discuss the new voluntary quit reasons that are contained in statute.

First one relates to mandatory military transfers. As you are probably aware, under current law an individual is eligible for benefits if they quit to -- the previous law; it's not current anymore -- they are eligible for benefits if they quit to follow a spouse who had been mandatorily transferred by their employer. The new law limits that to individuals who quit to accompany a military spouse who has been mandatorily transferred. If they move somewhere else outside their labor market that's out of Washington or

within another state that allows benefits to spouses who quit to follow a military spouse.

We surveyed the states that do this. There are 15 states that allow benefits under these circumstances. So an individual who follows a military spouse to one of those 15 states could be eligible. If they are transferred to one of the remaining states that do not allow good cause, they would not be allowed benefits. They would have to serve a disqualification period. It would be considered a quit for personal reasons.

MR. TUVEY: There's another situation that occurs quite frequently that I think needs to be addressed and that is

where the spouse or the military person moves to one duty station and the spouse moves to another location entirely.

MS. MYERS: It's under (5).

MR. TUVEY: Oh, how did it miss that? Imagine that. Thank you. I did flat miss it.

MS. MYERS: Okay.

We have defined the term "military" to include the US Armed Forces, activated reserve members, activated members of the National Guard, commissioned officers of NOAA, and commissioned officers of the regular or reserve corps of the Public Health Service. These are the save individuals who are entitled under federal law. They are considered to be military veterans and entitled to service.

Do we have any questions or comments on that section? Nope?

Okay. The next one, 192-150-115, "Reduction in compensation of 25 percent or more."

The statute provides that an individual has good cause for leaving work if their employer reduced their pay by 25 percent or more. "Compensation" means the same as "remuneration," which is defined in the unemployment insurance law. That includes wages, fringe benefits, any medium paid in forms other than cash -- housing, car, whatever types of compensation is granted to the individual.

"Usual" includes amounts that have been actually paid by the employer or if they haven't been paid yet, the compensation that was agreed upon by the employment and came as part of the agreement. The employer action was the cause of the reduction in their usual compensation. We will look

at the reduction in compensation that occurred since the beginning of their base period to the date of separation to determine if it's been 25 percent or more.

At our previous stakeholder meetings, most of employers there indicated that it was certainly not their intent to allow employers to kind of game the system by cutting 10 percent here and then 10 percent and 10 percent so that they never reach a threshold of 25 percent. We will look to see how much of their pay has been reduced to see if it reaches

the 25 percent level.

We will also look at their most recent pay grade or salary, not including anything that may have been granted as a temporary increase. So for one month the employer wanted

you to go do this job which maybe paid differently. Then at the end of that job they've reverted to their former job. That's not considered a pay cut when it was a temporary assignment.

Any comments or questions about that section before I move on?

"Reduction in hours of 25 percent or more."

It's the same good cause factor as given in the statute. If the employer reduced their hours by 25 percent or more, the individual has good cause for leaving work.

Again, "usual hours" are those hours agreed on by you and your employer as part of your individual hiring agreement.

For seasonal jobs, the number of hours customarily worked during that season, which may be less than full time depending on the nature of the job. And for piecework, the

number of hours they customarily work to complete a fixed volume of work. There are some people who are paid by piecework, and if they go from 30 pieces of work to finish day they only get two pieces of work to finish a day. That's still a reduction in their hours, because it's

certainly a reduction in the amount of work that they have that they are going to get paid for.

The clarification on (1)(a) is the hours of work agreed on by you and your employer as part of your individual hiring agreement. That is distinct from what's customary to the occupation. There are cases where an individual may take one job because the employer says, "We are always going to need you to work 50 hours a week." And an employee took

that job rather than another one because he or she could have used the extra money. The employer then cuts that back down to, say, 35 hours a week to 32 hours a week, maybe that may have been standard to the occupation, but that wasn't what the agreement was between the claimant and the employer, so that's a change in their hiring agreement. So we will look at the individual hiring agreement in this case to determine whether there's been a reduction.

MS. BACIGALUPO: Does the claimant then have to not accept the change and quit work? Or what if they accept the change, do the work, and then quit?

MS. MYERS: If they accept the change and work, then they don't have good cause.

MS. BACIGALUPO: And how well you determine that?

MR. SEXTON: Case by case.

MS. MYERS: Thank you, Dan. Case by case. It will

depend on contacting the employer and contacting the

claimant. When did the employer notify you? When did the effective date of the change take place? Did you continue working beyond that? Because at that point then we will -- well, we'll talk a little later. It's not a job refusal anymore because you have accepted the job. You have accepted the new conditions of employment.

MR. SEXTON: Maybe I was told it was temporary.

MS. MYERS: Well, again, that's why you get back to the case specifics. Just like we aren't going penalize the claimant -- under benefits for the claimant on what was projected to be temporary, we wouldn't penalize the claimant. If the claimant was told by the employer, you

know, "To reduce our business expenses, we are cutting everybody down to half time for the next month, and then you will be back up to full time." If there's that kind of information given, then certainly the individual would probably not quit for a temporary reason. However, if the employer said, "It's a permit cut," and you decide, "Well, I'm going to keep working anyway," then you have accepted that change in circumstances.

MS. BACIGALUPO: So that was my question. If they continue to work under the new circumstances, it means they have accepted the new circumstances.

MS. MYERS: Dan.

MR. SEXTON: Gosh, I don't want to argue with every

point here, but everything here is maybe -- it's got to be a case by case. So I work the rest of the week. So I work the rest of the week, and when I got my paycheck on Friday or I got my paycheck the next week, I say, "Hey, I can't make it on this. This isn't what we agreed on." You know, continued working, I think is still subject to case by case.

MS. BACIGALUPO: I think that if you give that kind of flexibility -- so if they work two weeks and decide, "I really can't do that," is that not accepting that? I mean, what if they work three and a half? What if they work -- then you have a constantly moving target. A person should give notice on the day that they were told of the change.

MS. MYERS: The problem that we come into -- and I will certainly take another look at the comments -- but the reason we put it in as that is once somebody accepts a job and they decide later that they don't like it and then they

quit, the reason for the quit isn't a cut in pay or a cut in hours, it's dissatisfaction with the work. Just like now, under the current state law you have good cause for refusing unsuitable work. But if you take unsuitable work, you can't quit under most circumstances.

MR. SEXTON: But how long to you have to take it for?

MS. MYERS: If you accept that work, you are done. Let me talk to Joel.

MR. NICHOLS: I will be real quick. I respectfully

disagree, Juanita. I think that a person under the scenario that Dan described who continues to work those hours and gets the reduce pay may not see the impact or feel the

impact until they get the paycheck. Maybe they didn't realize it when the employer cut the hours, but they are still quitting because of the reduction in hours, even though they've worked under the new arrangement. So I don't think you can necessarily say that by working a week or two or three that they are not quitting at that point because of the reduction in hours. They are quitting because of some other reason.

MS. MYERS: Thanks.

Jim.

MR. TUSLER: Juanita, just by the nature of work, your hours reduced is looking backwards. There are a few times -- your first day the hours agreed to by you and your employer is part of the hiring agreement. No one is going to quit their job and benefits if you miss a day. There's a snow day. We didn't go to work yesterday, but it's always past tense. If there's three months here where I'm losing

-- the employer calls me blind and says, "You can't go in. I don't have any work." It's looking in the past. The department has to make allowances. Very seldom there is an agreement in the future. Jim, you are not going to work more than four days a week for the next few months. In the

real world that very seldom happens.

MR. DOOLEY: Wouldn't that be covered under the seasonal employer provision?

MR. TUSLER: Actually, no.

MR. DOOLEY: Why not?

MR. TUSLER: It's not seasonal. It could happen any time. It could happen to a long-term --

MR. SEXTON: Jim's not talking about a seasonal situation.

MR. TUSLER: Absolutely not.

MR. SEXTON: If Jim is done, I want to agree with what he said completely. You know, I think that these situations are usually made under duress. Your employer usually isn't saying next week or two weeks from now or a month from now we need you to change your hours or do this other assignment. It's usually when you come in and they say, "Hey, this is the deal. This is the situation. Your workstation has just changed right now." And most employees I don't think are just going to drag up and leave their employers shorthanded like that.

So I work the rest of the day. So I work the rest of the week. I'm just trying to help the guy out. They made it sound like this is an emergency and something that had to be done at the time. I think you got to look at that.

MS. MYERS: Okay. Tom, and then we will move on.

MR. DOOLEY: I guess I'm a little confused in terms of whether we are talking about an offer of new work or whether we are talking about a reduction in hours. Because the rule regards reduction in hours of work. I mean, that is going to be a discussion that is going to be happening between an employer and employee. It's not going to be, "Oh, golly, why don't you take this other job over here that's at half time." And then they go over and work the half-time job and try to get unemployment benefits. That's not what's happening here.

What's happening here is, in essence, where huge chunks

of people are significantly reduced in their hours of work at a retail operation, for example, where they just don't have enough work. I think Jim talked about this where they just don't have enough work or whatever the situation is, and they quit. So, no, I don't necessarily disagree that people don't need to be concerned with new work opportunities, but this is not what we are talking about. We are talking about a discussion between an employer and employee about a specific reduction in hours. The employer community has already said that we're not going to let the employer community glean the system by, you know, needling away the entire year and not ever get to 25 percent. We could have done that with 10 percent. But what we're looking at now, if there's a concerted effort by an employer

to force an individual out of employment, they out to get benefits. And that's with the 25 percent reduction.

MR. SEXTON: I would love to argue some more.

MS. MYERS: Do it on break.

Change in worksite. Under current statute an individual can have good cause for quitting work if the distance to the worksite is beyond the normal, customary community distance for the individual occupation and labor marked area, even if they knew where the job was when they took it.

(Whereupon, a stakeholder joined the proceedings.)

Under this statute, the location of the employment must have been changed because of the employer's actions, and the change must have substantially increased the distance they

travel or increased the difficult or inconvenience of travel, and resulted in a commute distance or time that is greater than is customary for the workers in the claimant's job classification and labor market area.

And we have defined "job classification" and "labor market area" consistent with what we have in the past, and do clarify that they can't -- good cause for quitting work can't be established under this section if they knew the worksite location and distance to work at the time they were hired. And that is the new statute.

Questions?

MS. MYERS: Would you please state your name first.

MR. JOHNSON: I'm Mark Johnson with the National

Federation of Independent Business.

Substantially increased, define that. What are we talking about? How many miles?

MS. MYERS: It is fact specific. It's going to have to be on a case-by-case basis.

MR. JOHNSON: It's up to the department to decide.

MS. MYERS: Correct.

Gina.

MS. BACIGALUPO: What if there's an increase of -- let's say it's five miles from home and were sent to another site that's 25 miles from home. If 25 miles is within the customary distance of travel --

MS. MYERS: Then they don't get benefits.

MS. BACIGALUPO: So it has to be customary as well as significant.

MS. MYERS: (A) and (b) are an "and." It has to be

substantially increased and result in a commute distance or time that is greater than is customary.

The example we have used is, for example, somebody lives in Olympia, and then the employer relocated -- and currently they drive 40 miles south to their job. And then the employer moves their location, and they are up around

Federal Way, so the person drives 40 miles north. Well, that's not an increase in distance, but it's certainly an increase in the difficulty and time of travel. You can just zip down to Centralia, but you can't just zip up to Federal Way in the morning. So that could be one of the things because most of people in Olympia don't work in Federal Way it's not -- I mean, it happens, but most people in Olympia

don't work in Federal Way. Depending on the occupation, it's usually not within somebody's customary labor market. And that move by the employer simply increased the commute time and difficulty of travel in that case.

Similarly, if they lived in North Bend and they commuted to Seattle as opposed to the employer moved across the mountains. And now they are in Cle Elum, and the distance isn't substantially different, but it's a heck of a haul in the wintertime.

It's 2:30, so let's take a ten-minute break here and give Marcie a chance to rest her fingers. For those that came late, the rest room code is 143. You will need to use those to gain access to the rest rooms, which are down the hall and toward the left.

(Recess taken.)

MS. MYERS: WAC 192-150-130, worksite safety. The law

permits an individual to receive benefits if the safety of the worksite deteriorates and they notify their employer and

the employer does not correct the satisfactory hazard within a reasonable period of time.

As we discussed in previous stakeholder meetings, a claimant should be able to expect that when they are offered a job that their worksite applies with the appropriate federal health and safety regulations. Either after they begin work or accept a job they become aware of an issue that was not disclosed by their employer, we will consider it that the safety of the worksite has deteriorated.

The individual must -- to establish good cause they must notify their employer of the safety issue. Give the

employer a reasonable period of time to correct the situation.

The "employer" means a supervisor, manager or other individual who could reasonably be expected to have authority to correct the safety condition at issue.

A "reasonable period of time" goes back to the reasonably prudent person standard. How long that individual would have remained in the worksite and continued working in the presence of the conditions that are at issue.

If there are safety issues that present imminent danger of serious bodily injury or death to any person, then the reasonable period of time is immediate steps to make corrections.

And if the employer has been issued a citation by a

regulatory agency that is charged with monitoring health and safety, then the employer needs to correct the condition within that time period specified in that citation.

"Serious bodily injury" means bodily injury which causes a significant loss or impairment of the function of any bodily part or organ. And that's taken from other state law that defines a similar term.

Any questions about worksite safety?

MR. TUVEY: I have, I guess, one question or concern. It seems I can't remember a time where -- it says, "you become aware of a safety issue." Sometimes there's a disagreement between the worker or employer as to whether or not something is a safety issue. So I think there needs to be some sort of an acknowledgement that the employee isn't being unrealistic or unreasonable outside of customary trade

practices or something about what, in fact, constitutes a safety issue.

MS. MYERS: Thank you.

Other comments?

Jim.

MR. TUSLER: With your permission, could I go back to 150-120?

MS. MYERS: 120?

MR. TUSLER: This 25 percent reduction in time and hours. I read paragraph (3), "All reductions in hours

occurring since the beginning of your base period."

Let me give you an example. There's an agreement

between you and the employer for a 40-hour-week job. The base year is at the end, so we have 11 months of history working 40 hours a week. The job is reduced to ten hours a week. Is that a 25 percent reduction?

MS. MYERS: Yes.

MR. TUSLER: Isn't that a contradiction from (3): The reduction in hours occurring since the beginning of your base period through the date of separation will be included in the determination as to whether your hours were reduced by 25 percent or more? Is the adjudicator going to say, "You have had 11 months. Here is --

MS. MYERS: No. It just means --

MR. TUSLER: Why is that in there then?

MS. MYERS: What we're saying is we will go back to the start of the base period to look at how the -- we'll look at the beginning of the base period for what they were expected to be working. So the intent of putting this in is so that

an employer couldn't say, "I'm reducing your hours by 10 percent and in another two months another 10 percent and two months later another 10 percent and get away with saying, "I never reduced their pay 25 percent or their hours by 25 percent." Now we've said, during the entire base period they have had a 30 percent reduction in their pay.

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MR. TUSLER: Let me take another similar situation. An ordinary situation, the worker worked that ten hours a week for three weeks and tried to get back to a 40-hour week and then quit. How is the department -- is the department going to say, you know, "You worked a ten-hour week; this is your new schedule; you are denied benefits"?

(Whereupon, a stakeholder joined the proceedings.)

MS. MYERS: It would depend if the employer told the person, "Your new job is going to be ten hours a week," or, "This is your job, but we are reducing your pay or your hours from now on." If it's just a temporary -- again, fire or snow or something like that, it's just temporary reduction, no. That's not a --

MR. TUSLER: So the fact that that person worked that ten hours getting the employer through a hump doesn't jeopardize their unemployment on the fourth week.

MS. MYERS: Correct.

MR. TUSLER: And that's consistent.

MS. MYERS: Tom, you had a question.

MR. DOOLEY: No. I was just going to support that. In terms of his first scenario, the employer could have changed their work hours by more than 25 percent the day before they

quit and that would be sufficient cause to provide benefits. So, I mean, Juanita's right. They are going to look at it

from the beginning of the year and if that was what your agreement was, then at any point during that year you were reduced by 25 percent and you quit right after that, you are qualified.

The other thing in terms of fire and flood and all that stuff, it has to be employer caused. I mean, the 25 percent reduction has to be employer caused. The statute requires the employer reduction.

MS. MYERS: Yes.

MR. DOOLEY: So it can't be caused by an act of God or

anything else.

MR. KNOWLES: Excuse me. I'm a little confused by something.

MS. MYERS: Hold on just a minute. You need to identify yourself for the record, please.

MR. KNOWLES: William Knowles. The statute requires that it be a reduction in force or reduction in hours by the employer, right?

MR. DOOLEY: That is correct.

MR. KNOWLES: I don't understand why the employer -- we don't want the situation -- it should not be the interpretation that the employer decides everything is an act of God. If the employer is the one that tells you you are only working ten hours a week, it's the employer who's reducing your hours. And I want to make sure that the

rule-making record is clear. Am I hearing agreement from that from the agency?

MS. MYERS: You are not hearing any agreement. You are hearing that I have acknowledged everybody's comments, and then we will go back evaluate all the comments.

MR. KNOWLES: Am I hearing, though, from the representative, Tom, I'm sorry, that you agree with that?

MR. DOOLEY: Uh-huh.

MS. MYERS: Okay.

Gina.

MS. BACIGALUPO: I just want clarification because I'm confused. So are you are suggesting that this week of snow and a number of people didn't work, is that employer caused, or is that not employer caused?

MS. MYERS: I'm not agreeing on any point right now. I'm saying we'll go back and look at that.

MR. DOOLEY: One day of snow is not going to create a 25 percent reduction.

MR. SEXTON: Okay. Hold on. That's an act of God.

MS. BACIGALUPO: I felt that it was an act of God.

MR. KNOWLES: Well, it's entirely possible there may be some of us that don't believe in the existence of God, so we know that most of the evil in the world is created by employers.

MS. MYERS: Okay. Thank you. Let's move on.

Illegal activities at the worksite. Illegal activities includes violations of both civil and criminal law. To

establish good cause for quitting, the individual has to notify their employer of the illegal activity and give their employer a reasonable time to correct the situation. An individual is not required to notify the employer before quitting if the employer is the one conducting the illegal activity and notifying them could jeopardize the claimant's safety or is contrary to other federal and state laws, such as the whistleblower protection laws.

I will get to you in a moment and hear your comments on that.

The "employer" means the same as similar as worksite safety, the supervisor, manager, or other individual who could reasonably be expected to have authority to correct the illegal activity at issue.

And "a reasonable period of time" is the period a reasonably prudent person would be expected to continue

working in the presence of the activity at issue.

MR. DOOLEY: Juanita, I appreciate the response of the department to the commentary that we made in our letter in terms of the illegal activity. I think we have talked about this a couple of times.

The concern that we continue to have with 050 or with 135 is that while we agree that illegal activity does

include both civil and criminal that the reporting aspects of the civil versus the criminal should be separate.

And the reason I say that is because the addition of the employer languages was our request in our letter. Now, even from my standpoint, it clouded the issue more. Because now if I look at it, I'm not required to notify my employer.

That employer definition now includes the supervisor, manager, other individual.

And let me use the -- say, sexual harassment issue on a civil side. I'm now not required to inform the individual who's performing the illegal activity, but I could have informed his superior who could have remedied the situation or has remedied the situation, but that's now not allowed because of the definition of "employer" being allowed. Because it could cause me -- the employer is all those people now.

So I guess the question -- this goes way back to the original stakeholder group meetings where I think the employer community agreed that if someone was, you know, operating a meth lab out of the basement of their operation, I think, is what the scenario was, that it's probably not in the best interest of the employee to go up to the employer

and report that "There's a meth lab in the basement. I want it to be taken out of here." It's best to report that to someone else outside the employment. So, in essence,

separating the criminal from the civil, we still have the ability to look at the illegal activities, but we are looking at them from two different angles. And that would require different reporting.

If I'm in a civil situation that's not going to endanger my life or bodily harm or whatever, the whistleblower protection and things like that, in a civil situation where I do have the ability to inform someone in the employer's operation that can fix the problem, you know, transfer the person, that can do things to remedy the

situation, that should be required of the claimant before they are allowed benefits.

On the other side, if there's a criminal activity going on, the only request that we make if there's not -- actually, say, if it's criminal in nature, they probably ought not to inform the employer if that's the employer who's doing the illegal activity. They ought to inform that to a competent authority, which would be similar to what they do in a misconduct situation where they have reported to a competent authority that can actually do something about the employer's wrongdoing.

So I think the request that we are still making is that we look at this as two separate activities illegal in the workplace that have two different structures to them.

MS. MYERS: Thank you.

Mr. Knowles.

MR. KNOWLES: My concern is -- let's just take some various kinds of illegal activities that we know are common for employers in this case. Hiring of undocumented workers as an example. We know this is a common practice by employers in this state. If you are an employee who determines that the employer's engaged in that practice, do you need to report that to the employer? It's a civil, noncriminal activity, you know. For an employer violation of each one of these laws, for example, do you have to go stand in line to report that to the employer? I don't think so.

MS. MYERS: It would depend on the way the rule is drafted. If we say that the employer is conducting the

illegal activity and making the report could jeopardize their safety or is contrary to other federal or state laws.

MR. KNOWLES: Well, I guess my point is in that situation, it would seem to me, are we going to say, "Hey, Jose and Luis are undocumented workers," could jeopardize your safety. And, you know, it seems to me that this distinction that's being made between civil and criminal reporting creates a real problem. Because some civil reporting, reporting about civil violations, can be every bit as risking if not more risky that reporting certain criminal violations. I would hate to see a different

standard that would permit or require the worker to really

endanger his life in order to become eligible for benefits based on an artificial distinction that I don't see any support for in the statutory language, quote, "illegal activities" in the individual's worksite.

MS. MYERS: Thank you.

Tom and then Dan.

MR. DOOLEY: I think that there is a way in which both -- I think we would agree that you don't want -- let's say you have a single or a two-person office, where the secretary is the one being harassed and reporting to the employer is the same guy that, you know -- that could jeopardize that individual. And I think the department is capable enough of riding into both sides of that protection to the employee where they could give a reasonable look at the fact that they could have been harmed or it could create harm. But when there's a multiple employee operation where there are other people, the employer ought to be given a

chance to correct that scenario when the illegal activity is happening.

MS. MYERS: Okay. So noted.

First Dan and then --

MR. SEXTON: Well, gosh this is one of my favorite sections. I think Bill explained it very well, and I think there's probably some of Tom's points that I could agree

with also. If you're a two-person shop or a 20-person shop or a 2,000-person shop, whatever, I think you are still putting the employee in harm having the employee report the criminal activity to the employer. And if it's sexual harassment or if it's extortion or whatever the crime may

be, I think you're putting that employee in harm's way by making that employee report to the employer when the employer is the one that's committing the illegal activity. I think it -- the department should not be putting the employee in harm's way.

MS. MYERS: Thank you.

First Gina.

MS. BACIGALUPO: A couple of things. One of them is, on the sexual harassment example there's a requirement that employers have policies in place to deal with sexual harassment. In those policies they have to have more than one person -- alternative person reporting; it might be one is in management or one is an employee facilitator or some other thing.

So if we say someone can quit for any illegal activity, then this whole policy that every employer has in place for sexual harassment is no longer any good. You have to say

that if any one in your employ ever conducted illegal activity, then your employee can quit, and that seems absurd.

And I'm wondering why there isn't some notation that the quitting rather than the reporting should meet the prudent person test. If I found out somebody's working for my company and they are an illegal alien, it's ridiculous that I lose my entire job and income rather than inquire -- and possibly I'm wrong. Because I think I know, but maybe not. How does every employee on the job site have the ability to decide those issues? And if they decide and they are wrong and they quit, then what happens?

MS. MYERS: First Joel.

MR. NICHOLS: I think this distinction, with all due respect, that Tom is suggesting that there should be reporting required for civil versus criminal activity would result in arbitrary decision making. And the reason that I say that is there are many laws that impose both civil and criminal sanctions. There are some crimes that are rather innocuous, really, that don't impose to anybody's health or safety. There are many civil wrongs to the contrary that can impose serious threats to people's health and safety. And to say that if it's a civil matter there's a duty to report, and if it's a criminal matter there's no duty, I think it's arbitrary. So that's my objection.

MS. MYERS: First Bill.

MR. KNOWLES: I think I want to dispel the concept that this is going to affect in any way the employer's sexual

harassment internal policies. First of all, in the situation where the employer, as I read the rule, is the person engaged in the conduct. This is what we call a, you know, direct act of the employer by virtue of the principles of the agency. And there's no question but in that situation the remedy -- there's no obligation to report it to some higher authority under the sexual harassment laws if the party that's the perpetrator is the, quote, "definitional employer," and that's same definition that I see here.

I will just -- so the employer community doesn't have any illusions about this sexually harassment policy be dammed, if the employer is the harasser, your policy is

irrelevant. And the employee, as a matter of law, no matter what your policy may be has a statutory legal permissive right to leave employment, seek damages directly from you, and in this situation should also have the right to receive unemployment benefits consistent with that. So the example of, quote, "sexual harassment" that's been used here is an ill-suited example and raises all kinds of, you know, "parize" (phonetic) that are illusory and, you know, only in the -- the obscure mind of the HR manager who would write such a policy.

MS. MYERS: Thank you.

Tom, did you have a comment before we go on?

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MR. DOOLEY: I think the department, Juanita, has

enough. I do think that the department is capable enough to review both sides of that issue and come up with language that deals with the harm to the employee, which is what we are most concerned about. I don't think anybody here, employer or labor or legal, is going care about anything but that in that sense, so I guess we are just going to have to trust you guys, Juanita.

Our request is that there just be some reporting so that there is an ability of the employer to remedy the situations when the opportunity exists to do so.

MR. TUVEY: I just want to make a comment similar to what I made before. The whole notion whether or not an activity is illegal because claimants have -- employees and claimants have sometimes a different notion of what is legal or illegal other than what, in fact, maybe illegal. So there should be some kind of requirement that it, you know,

in fact be illegal. But it should be in some way verified or proven or decided as illegal by some competent authority rather than the claimant just saying it was illegal.

MR. KNOWLES: I think that's a very reasonable issue to bring up. It seems to me that the question is, though, as to whether there is an actual violation of the law or circumstances which would lead a reasonable person to believe that there was, in fact, an actual violation of the

law at the time that the -- in that regard it seems to me the reasonable person standard makes logical sense to be applied to the question of illegal activity.

MR. TUVEY: For once in my life I agree with you.

MR. KNOWLES: Stick around. You'll get more.

MR. DOOLEY: One more thing. It's to commentary about arbitrariness. If people look at the legislation, if we are looking at the statute, the statute requires the employee whether criminal or civil to report to the employer, period, end of story. What we are trying to do here in the rule is allow for the employee to have an option other than informing the employer. So, I mean, if people want to be stringent about it, let's go back to the law. We're trying to work out a compromise for the department in the language to allow for an employee who may have their situation threatened not to have to comply strictly with the statute.

MR. KNOWLES: The statute is lacking singularly in legislative history only about what it is intended to mean through the obscure veil of hindsight. It seems to me that the employer's musing about legislative intent here is of little import. We have a situation that the department can

either enact a legislation that will have constitutional statutory muster or not, and the distinction imposed or suggest here does not. If the department wants to put that in the rule, be prepared to face the demise of said rule in

legal proceedings in the future, especially if it's based on legislative history.

MR. DOOLEY: Read the statute. It's not history. It's in the statute.

MR. SEXTON: To hopefully close debate on this, we have spent a lot of time on this. We have got to move on, but Tom brings up the statute. And I've got it right here in front of me. Well, it says, "The individual left work because of illegal activity in the individual's worksite.

The individual reported such activities to the employer and the employer failed to end such activities within a reasonable period of time." I cannot believe that it was -- and Tom you spoke to this too, that it was ever anyone's intent to have criminal illegal activity by the employer -- that the employee had to report criminal activity to the employer. And criminal is not mentioned here. Tom, you said it was not your intent. It was no one's intent. I cannot believe that any legislator ever saw this and said, "We are going to make employee's report employers' crimes to the employers. I cannot believe that it was ever anyone's intent. The word "criminal" is nowhere in here.

MR. DOOLEY: The courts will look at the statute, Dan. We are just trying to give them an alternative.

MS. MYERS: Can we move on now? I certainly accept all your comments, and we will look at that question. But

time's flying.

The next section, 192-150-140, "Change in usual work that violates religion or sincere moral beliefs."

This section is a substantial change from what went out in the proposed language. We've added a whole section (2) and (3). We have defined "usual work" as spelled out here. I'm not going to read it. And then we've established some criteria that we will look at to determine whether the individual had good cause for quitting in this situation.

The change in usual work must be a result of action taken be the employer. Work must require you to violate your religious beliefs or sincere moral convictions; mere disapproval of the employer's method of conducting business

is not good cause for leaving work. They must request alternative work from the employer, unless doing so would be futile. This goes along the lines of taking reasonable steps of preserving their employment. The work or activity must be directly, rather than indirectly, affect their religious or moral beliefs. And -- this gets back to your point earlier, Bill -- the objectionable condition must exist in fact rather than be a matter of speculation.

And then (3), you will not have good cause for quitting work under this section if you are inconsistent or insincere in your objections -- which I know is always going to be a judgment call; the objection is raised as a sham or means of

avoiding work, or you knew of the objectionable aspects of the work at the time of hire, or you continued working under those objectionable conditions.

And I will now open it up for comment, Bill.

MR. KNOWLES: The (3).

MS. MYERS: Yes.

MR. KNOWLES: In the circumstance of, for example, religious accommodations, it is a matter of federal law that a person may claim a -- request a religious accommodation and must be provided the religious accommodation by the employer, unless, of course, it would create undue hardship on the employer. But an employee who knew of the objectionable condition at the time of hire may still make the request, and an employee who has submitted to the objectionable conditions may still make a request for religious accommodation. It seems to me that it is irresponsible of the department in (3)(c) to require or

create conditions that would, to that extent, be inconsistent with the obligation to the employers imposed by Title VII of the Civil Rights Act.

Additionally, and I will give you an example of this, I had a case not that long ago where my client was a janitor who was Muslim and was requested by the employer to cleaned toilets without gloves or with less-than-adequate gloves. And this, because the handling of urine is considered very

unclean, created a substantial problem for him, which he reported to the employer and said, "Hey, you know, these gloves -- I have got to have gloves to do this job, basically." And the -- and he made the objection to the

employer.

Well, the State comes out, and the employer says to the State, you know, "Well, we have these other gloves over here that he could have used, but, no, we didn't provide them to him for this particular task." In which case the State says no illegal -- no law violation occurred. So it wouldn't fall under the prior section we were discussing.

But it would seem to me that it should not be the situation that if on one occasion he cleaned the toilet, he would thereafter forever be barred from making a request. So it seems to me that that particular section is objectionable.

MS. MYERS: Thank you.

Tom.

MR. DOOLEY: Mostly just a question because of the commentary back here. I'm trying to figure out, this is a change in the usual work made by the employer that would

violate religion or sincere moral beliefs. How would or would a request for accommodation from an employee be a change in usual work? I mean, I can understand if -- I guess it's going to have to be a case-by-case basis, but

this is a change in usual work not a request for accommodation, which is a separate whole activity.

MS. MYERS: Right. However, there are certain situations in which an individual converts, legitimately changes their religion or moral beliefs. And the work hasn't changed. They have changed.

Now, under this section that's not good cause for quitting. Whether the employer owes a duty, which he

probably does under federal law, to accommodate that religion is separate from unemployment law.

Now, if the employer fails to do so, the claimant may not get unemployment benefits, but they are certainly opening themselves to liability under a federal law.

MR. KNOWLES: Different statute.

MS. MYERS: Under a different statute.

MR. KNOWLES: I guess when I look at the statute I don't see support for that.

MS. MYERS: Okay.

MR. KNOWLES: Let's assume that the individual is looking at the statute here -- yeah, right here. "Usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs." All I see is a requirement that the work be changed, so I would disagree with that positioning you have just advanced. That's the only requirement. If the employee requests an

opportunity to be accommodated, I don't think that --

MR. DOOLEY: The work hasn't changed.

MR. KNOWLES: Well, in my particular case they guy had been reassigned as a janitor from duties that involved waxing floors to duties that involved --

MR. DOOLEY: So that would qualify.

MR. KNOWLES: Yeah, that would qualify in this particular situation.

MS. MYERS: Sure.

MR. KNOWLES: But the point that I would make is if he wants to clean the toilet without objection, then that should not thereafter serve to bar him forever from

unemployment benefits.

The other circumstance is where work assignments are -- you know, I'm handling a case that's starting trial. A religious accommodation question arises. The employer assigns this person from a job -- there's a big job classification change from one that was an armed -- unarmed position to one that was an armed position. And, again, the work changed, but it's the same situation. The claimant did one tour at an armed position before they said, "That's it. I'm not doing that." And that should not thereafter -- and as I said, it's a matter of federal law.

But I don't see any support in the statute for this idea that the employee does it once and that takes away

their right to object in the future. That's just a made-up law by the department. It has no basis in the statute, nothing that it relates to statute. But it's contrary to federal law, clearly, and it's not consistent with the statutory language. So my question is why would the department want to create that situation?

MS. MYERS: Okay.

Look at all the hands. Tom first. I think you were first.

MR. DOOLEY: I think the issue that the department was dealing with, if I might, is how much is a reasonable time frame. What if that individual worked the armed position for a year and a half and then decided it was against their religious beliefs. I mean, the department can't sit there and determine between a guy that worked a week and a guy that worked a year and a half and figure out which one is a

sincere religious belief or not.

So, I mean, what the department is looking for is some kind of de minimis that says -- I mean, maybe it's a reasonable person standard. A reasonable person would have quit the job, but they couldn't because they needed to support their family or whatever the issue was. Maybe if that's the case they could take that into consideration. But if somebody worked a year and a half or a year and then quits and says, "Well, it's because a year and a half ago I

was assigned to armed duty, I mean, it doesn't making any sense to the department to try to weed out the statute and what the statute was intended to do.

MR. KNOWLES: What was the statute intended to do? How

do we know what the answer to that is? We don't.

MS. MYERS: Okay. Just a moment, please. I'm sorry.

Pam.

MS. CRONE: (2)(c), the requiring the claimant to request alternative work.

MS. MYERS: Okay.

MS. CRONE: I don't see any justification or basis for that in the statute. And in the other voluntarily provision, that's not an additional requirement for being able to establish good cause.

MS. MYERS: Thank you, Pam.

And then Dan.

MR. SEXTON: I think Pam and Bill were making my points for me. (2) and (3) I think clearly goes beyond the statute. I mean, the statute is very short and very sweet. It's just a change in your usual work that violates religion

or sincere moral beliefs.

You know, it's possible that (1) goes to a reasonable person. It's possible. But I think (2) and (3) clearly goes beyond that and is not necessary and should be deleted.

MS. MYERS: Thank you.

Tom.

MR. DOOLEY: I guess, if deleted, then the section becomes a definition of "usual work," which is completely useless, again, in the confines of the statute. I mean, the department has to determine what a sincere moral belief is and what a religious conviction is. I mean, I think it would be foolhardy to think that we can go forward with a rule draft that has a definition of "usual work" and a title

that says "violation of sincere moral beliefs" and say that we have done anything.

The department is challenged with rule making to try to review what the legislature has done in statue, define it as best as they see fit, and move forward with a definition. And that's what they have done here. I mean, right, wrong, or otherwise, we would urge them to continue to add those.

MS. MYERS: Thank you.

I'm going to move on to the next section.

When is a separation considered refusal of new work? This rule was adopted as an emergency rule in being proposed in order to address a conformity letter we did receive from the US Department of Labor. There are copies over on the table if you didn't get it. The top one is a letter directed to Mr. John Humphrey, Acting Regional Administrator for DOL, Region 6.

25 And their letter to us is enclosed, which essentially

says that although there isn't a violation of the law on its face where it says that an individual has good cause for quitting work, if the reduction is 25 percent or more in wages or hours, however, under the FUTA, the state may not deny unemployment compensation to any otherwise eligible individual for refusing to accept new work if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing in a similar locality.

The Department of Labor has defined "new work" to include an offer by the individual's present employer of different duties than those the individual has agreed to

perform in the existing contract of employment or different terms or conditions of employment from those in the existing contract.

And then what they essentially went on to tell us is, for example, if the employer changes the work to a point where the work now constitutes an offer of new work because it's a substantial change, before the department can deny unemployment benefits we have to determine whether the wages, hours, or other conditions of that new job are substantially less favorable to the individual than those prevailing for similar work in their locality.

For example, if an employer cuts your wages by 20 percent, that's not good cause under our new statue for

quitting work. But if we review and say but now that -- that still makes -- your job is now paying substantially less than what other similar jobs in that labor market pay. In that case we would consider that not a quit, but basically an end of that previous job and a refusal of new work if that individual did not accept that new work.

And I know -- I guess I will speak for you here, Tom, and then let you elaborate. I know this raised some concerns from the business community because part of the intent of this amendment to the voluntary quit statute was to reduce the amount of the department's discretion in deciding whether an individual left work with good cause. But to avoid the conformity issue, we have drafted the rules essentially to say we will comply with what the federal guidelines state.

I don't know if the employer community wants to

introduce new legislation to fix this section. I don't know. But before we go over and tell the legislature that we can't implement this law because there's a conformity issue, we need to look at first if there is a way around this that works for the department that could get the department back in conformity and still not violate the letter of the law. We think this rule has done that, recognizing that it's probably not everything that the business community wanted.

Tom.

MR. DOOLEY: I guess we completely agree from the business community's perspective that the department has to

do everything in their power to arrive at conformity, and we wouldn't disagree with that.

I think what is at issue here, though, is the department has brought up conformity issues with regard to the 25 percent reduction in wages and the 25 percent reduction in hours. While FUTA and other statutes and other advisories may deal with the offer of new work, the inclusion of this section in this rule was intended to resolve the conformity issue on wages and hours. And the simple request that we're making from the business community's perspective is we don't have a problem with you trying to correct the potential for nonconformity brought up by the Feds by addressing this new work concept strictly to hours and compensation, which are the two areas that the Feds have itemized the conformity issue. Now -- and they are the only areas where we are going to, in our new statute, deny someone on a voluntary quit a benefit that the

department raises their concern. The other working conditions and stuff were taken out of the statute. We are not dealing with someone in that scenario anymore other than on the prior law, which is going to be claims prior to January 4. So we don't object to the department having a

standard for an offer of new work. In fact, the scenario you just brought up is if you reduce it by 25 percent and it's not within the confines, then that would be an offer of new work. I don't think anybody has a problem with that.

What people have a problem with is that in trying to address the hours and wages issues, the department has extended into other working conditions, which could be

anything. I mean, we could, you know, say that deterioration of worksite safety is now under those things. We could -- you know, it's back to the commissioner's overall encroaching authority that was removed from the statute. So I think the only thing here is that we are asking for a reworking of this section to accommodate just those things that are necessary to conform for the Feds.

MS. MYERS: Okay. If you read the letter we received from Mr. Humphrey, page 2 at the top: "As a result, before an individual can be denied unemployment compensation for refusing 'new work' the agency must determine whether the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality."

MR. DOOLEY: I would just venture that that is a natural tendency for the Department of Labor to respond with their full FUTA definition without regard to what we are

25 trying to fix here, without regard to what we are trying to

1 conform to in this statute, which is just wages and hours.
2 And if sent back to the Feds and said -- if we rework
3 this section and said the offer of new work for wages and
4 hours to comply or comport these two pieces of our voluntary
5 quit statute with the federal, and you sent it back up to
6 the Feds and said, "Will this work for you?" my guess is --
7 and maybe it's a flat-out guess -- is that they would say,
8 "Yeah." They objected to the two pieces. They responded
9 with what is normal and ordinary for them to do, which is to
10 kind of just push back up the kind of stuff they have at the
11 FUTA definitional language that no longer comports with our

statute and just regurgitated it for you.

MS. MYERS: Have you had a chance to read the UIPL letter that they attached?

MR. DOOLEY: The UIPL?

MS. MYERS: Yes.

MR. DOOLEY: Well, the UIPL is, again, a definition of new work for the department to use, regardless of what our voluntary quit statutes are. It's going to have to use those scenarios anytime anything is changed, not under a voluntary quit situation --

MS. MYERS: Right.

MR. DOOLEY: But under separation or any other UI claim. That is completely appropriate.

MS. MYERS: Okay.

MR. DOOLEY: But what we are trying to do within this rule is comport the law to the Feds on two issues: wages, and hours, and that's all we are asking for. It's appropriate to have a clarification so that we comply, but for the voluntary quit purposes it shouldn't be expanded.

MS. MYERS: Other comments?

Let's move on to misconduct, page 18 at the bottom, and we will here from AWB again.

We have left in the rule at this point that the behavior must be connected with their work to constitute misconduct or gross misconduct, and in (2) the action or behavior must result in harm or create the potential for harm to your employer's interests. This harm can be tangible or intangible.

The reasons that we felt that harm was required is

because of existing case law and because the reason cited in -- the definition cited in the statute of what constitutes misconduct, willful or wanton disregard of the employer's interest, carelessness or negligence that could result in serious bodily harm, repeated acts of carelessness or negligence, and disregard of standards of behavior that an employer has the right to expect, we feel, presupposed harm.

And I will speak for you again, Tom, and then you can elaborate. AWB has expressed some concern with the inclusion of the harm requirement in the rule. This is one

area in the rule where we have not yet reached a final decision. We included it in the emergency rules because they were already there. But based on the input we have

received, the department is going to look into this issue further. And I offered at the Monday meeting to make sure that labor is notified of any changes, but certainly you folks would be -- but just to let you folks know that we are continuing to review this issue. We did not disregard your comments. It's just the amount of time we had didn't allow for an entire reworking at this point.

MR. DOOLEY: No. And I appreciate that too, Juanita. I think what we discussed with our employer group and you and others in the department -- I think the best way to resolve a number of these issues and others regarding differences in legal opinion, both on the definitions of "wanton and willful," which we are not there yet, but saving time, and the "wanton and flagrant" issue, as well as the harm to employer should probably be something that we just get our counsels together on. And at least our counsel can

explain why we believe the way we do on the definitional aspects of the rule and then also on the harm-to-employer requirement. It might be simpler that way and avoid the time being eaten up here. Because you don't have your attorney here and we don't have ours, it might be beneficial just to have AGs meet and at least have a frank discussion

as to why.

MS. MYERS: Yes.

MR. NICHOLS: If that occurs, you are saying that, Juanita, that you will include labor in any discussion?

MS. MYERS: Yes.

MS. CRONE: So if terms again of the timeline, these rules are already -- they are in force.

MS. MYERS: Correct.

MS. CRONE: So would such a change require a whole new 101 process in terms of --

MS. MYERS: No.

MS. CRONE: It wouldn't because that's within the scope of the original 101.

MS. MYERS: It is. What it would mean is -- I mean, if we agree on one quickly before 120 days moves out -- if there's a change that's agreed upon before the 120 days expire, we would just follow a new emergency rule that would take effect immediately, or we can just proceed through the 120-day process and overall changes that we would need to make before we propose final rules.

But I will say that if there is a significant policy change, because that would be a significant policy change if we took out the harm-to-employer factor, we will certainly

consult with all parties.

MS. CRONE: I would like to say that I would be more

than a little disappointed if the harm requirement were omitted. I thought that that was based on a legal interpretation and decision made by the department's AG and don't really understand how that could be subject to change because one community is unhappy with that particular legal interpretation. So just would like to state that for the record.

MS. MYERS: Thank you.

Tom.

MR. DOOLEY: I think this is just one of those areas, Pam, as Juanita hit earlier, whatever way this thing comes

out it's probably going to get litigated because both areas feel strongly enough that that's probably the way it's going to be. So, I mean, the department is damned if they do and damned if they don't on this one.

But all we're asking for is for their AG to meet with our legal folks. And, heck, the department can have labor's attorney attend too and see their side on it as to why they think it is the way it is and let the AGs figure it out. And then the department can land somewhere, and we can figure out where we are at.

MS. MYERS: Because there's no case law behind a lot of these new definitions and terms. There is case law surrounding a lot of the misconduct statute, the things about willful and wanton -- we have cases around a lot of

those things but not specifically on how the new statute is to be interpreted. And case law could change things.

But you are right. I think you are absolutely correct. It's just wherever the department lands on this issue, just as we did on the 26 versus 30 weeks, it's going to be litigated.

Dan.

MR. SEXTON: Gosh, Juanita, if the department is going to set up some special meetings here on the issue of harm, maybe the department should set up some special meetings on the 26 weeks too, because, you know, there was very little of the changes made to this document that we agreed with that we had any say or any input to. And this would be, you know, probably the only one that we would be supportive of. And so, you know, if the department is going to treat this

specially and treat this different -- and I don't see any reason to -- then the department should treat the 26 weeks different and special too.

MR. DOOLEY: I don't think the business community has any objection, Dan. This isn't a behind the scenes special meeting behind closed doors. If the department wants to have a meeting that we can bring our AGs and we can bring our counsel to and you can bring your counsel to, who cares? Let's let everybody tell the department what their legal theories are. And you know, I can tell you what, I bet your

counsel's going to tell you they don't want to do that because they don't want to give away prelitigation. But our

counsel won't be afraid of that at all.

MS. MYERS: Right. And I'm not saying we are going to set up these meetings. AWB has requested a meeting. We have not yet decided what steps the department is going to take, what changes, if any changes, we're going to make to this section, if we're going to let our current decision stand. That hasn't been discussed. That is a decision for our commissioner who is going to make the decision as to what we are going to do. And I'm not speaking for her here today on that issue.

Pam, yes.

MS. CRONE: Juanita, can I ask a different question? It's actually for Tom.

So it's not just the issue of whether harm is required, but you also have some concerns about the definition around "flagrant and wanton." Would you mind outlining those here if it could be done briefly? Is that okay, Juanita?

MS. MYERS: Okay.

MR. SEXTON: That's going to be the next thing we were going do.

MR. DOOLEY: What I can do, Pam, is I can just get you a copy.

MS. CRONE: That would be great.

MS. MYERS: Actually, I don't have another copy with me. But at the Monday meeting Dan had asked if he could have a copy. Jan okayed us releasing the copy to him, so I could e-mail you, actually, if you wanted, AWB's comments.

MS. CRONE: That would be great. That's fine with me.

MR. DOOLEY: They are a matter of public record so.

MS. CRONE: Right, thank you.

MS. MYERS: Jan had just okayed that rather than making that a public record request.

MS. CRONE: I can keep this, Tom?

MR. DOOLEY: Yeah.

MS. CRONE: Okay.

MS. MYERS: Page 19.

Is everybody else okay? Can we continue?

Definitions under misconduct and gross misconduct. And that's where we defined the terms "willful," "wanton," carelessness," and "negligence," "serious bodily harm," "criminal act," and "flagrant and wanton."

"Flagrant and wanton" is a pretty -- I don't think high standard is the term I want to use. But because it is in the statute equated to criminal act, essentially, that an individual who commits gross misconduct has either committed a criminal act or has committed fragment and wanton

misbehavior and the punish for that misbehavior is substantially higher than it is for regular misconduct, that

we felt that the threshold for flagrant and wanton should be fairly high as to what type of behavior by the claimant would rise to that level that would result in the actual cancelation of their wage credit, as opposed to serving a denial period of ten weeks.

The definition that we have here -- because there's no Washington case law that we could locate that define the term "flagrant and wanton" -- is taken from some workers' comp cases out of Oregon. And essentially -- well, it says -- what we have got here is, conspicuously bad or offensive

behavior showing contemptuous disregard for the law, morality, or the rights of others and must be obviously inconsistent with what is right or proper that it can neither escape notice nor be condoned.

And for our adjudicators we looked at some of our past misconduct cases to try to find some examples that would rule as gross misconduct were they to happen today. And we were able to come up with a couple examples. And Dan's heard these before because we went into them on Monday, but I will give them here.

One is an example of an individual who was a delivery driver for a company and had one of those stickers on the back of the car, you know, How's my driving? Call such-and-such number. And he was apparently driving erratically and got at least one call where someone called

in and complained about his driving saying he was basically recklessly driving in this company vehicle.

When we returned to the worksite, the employer called him in and reprimanded him about his driving, and he became angry, went out, got into the same delivery truck, and tore out of the parking lot in the company's truck. He was reported again in about an hour for driving erratically and for drinking while he was driving in the cabin of the delivery truck.

Now, because the individual had specifically been warned immediately prior to and disregarded the employer's caution and increased the violation by actually adding drinking while driving to the reckless driving, we felt that could rise to the standard of flagrant and wanton disregard

to the employer's interests.

The other involved a case where the individual was an employee of a department store and was surreptitiously taping people in the dressing rooms and then posting those on the Internet. And we felt that was flagrant and wanton behavior that violates the -- shows disregard for the law, morality, or the rights of others.

So those are the two types of examples that we have identified thus far that had they happened today -- that is what we have provided for our adjudicators to provide some guidance for what we are talking about when we are talking

about flagrant and wanton behavior.

MR. DOOLEY: Juanita, I'm kind of at a loss as to how

you want us to comment from the record's perspective. Is it sufficient that the letter has been submitted?

MS. MYERS: Yes. Your letter is part of the record.

MR. DOOLEY: I guess the only thing that I would comment on very shortly for the benefit of others that didn't get the letter, Pam, especially the wanton piece, our major objections are the objections to the inclusions of the terms "intentional and malicious" to the definition. The civil law doesn't regard wanton behavior as having intent. It is just a reckless action. So I guess the request that we are making is that you check with your AG in terms of the natural definition of case law with regards to wanton in and of itself and whether wanton rises to the level of intention and intent which is a fairly hard standard.

The other issues within the terms "willful and wanton" or "willful or wanton," I guess, is the fact that there are

actions that are considered misconduct because the acts signify willful and wanton disregard. I guess the question that we would ask the department is if they could look at the statute again and report the definitions of "willful and wanton" to fit within the examples given by the legislator for those particular activities.

And then the only other piece that we commented on was

the "flagrant and wanton" only adding a sense of added gravity to the recklessness that may be concerned in the previous definition of misconduct, which was just the "willful or wanton." Because really what you're adding in the definitions here and what the statute added was just an additional word to the "wanton," which is just a general

misconduct, to wanton activity which is "flagrant and wanton." It's just adding a gravity to that in terms of the recklessness of that.

MS. MYERS: Okay. Other comments or concerns on that section?

MS. CRONE: I just would like to say I appreciate the care that the agency did take in trying to do what was necessary to implement the new law, but also make a distinction between the two kinds of misconduct in that we are taking about wiping out wage credits, meaning that an employee isn't going to get unemployment benefits for a long time to come and making sure that the behavior did indeed warrant that.

MS. MYERS: Okay.

MS. CRONE: I mean, we move from a standard gross misdemeanor felony to misconduct. A much lower kind of

threshold now triggers losing those credits. And I think it is a difficult task trying to implement the new legislation but implement it in a way that doesn't go beyond what was

perhaps intended.

MS. MYERS: And we don't know what impact this is going to have or how many cases we are going to receive. We only get about 50 cases a year of the felony gross misdemeanor. I don't know if changing the definition is going to increase that or not. Time will tell.

MR. TUVEY: It seems that it should.

MR. DOOLEY: Well, I think that if it doesn't, then I think there's something wrong with the definition. That's obviously in hindsight. We need to look at that going

forward. But by the same token, I don't think we need to set the bar so high to "flagrant and wanton" that it rises to felony or gross misdemeanor either.

MR. TUVEY: Just for the record I would like to say that I agree with Tom's comment and particularly the notion about the intentionality about the section of wanton. The section of wanton seems to be without regard and not necessarily intention.

MS. MYERS: Okay. All right.

Let's move on to the next section, 210, "Willful or wanton disregard."

As Tom indicated, they are in the new statute, 50.20.050(2). A new list of various factors that -- excuse me, 04.294 -- sorry. I'm thinking voluntarily quit not misconduct -- (2) that are listed as examples of what

constitutes willful or wanton misconduct. And what we have done is added some definitions around those terms.

One example, of course, is the repeated inexcusable tardiness. The statute requires that the individual -- qualifies that one that says for which the individual has received "warnings," which is plural, so we put -- you know, that means two or more. They have to have been warned at least twice about their tardiness.

Skipping down one, that requirement for warnings is not repeated in the statute as far as repeated and inexcusable absences. The absence has to be inexcusable, but the statute does not require that an individual had been warned in the past.

I use Monday as an example. If an employee decides

they're going to Vegas for a week and they don't tell their employer and they just take off, if the employer fires them, I don't know that there is a requirement that the employer has warned them that that was not appropriate first when it's certain that a reasonable person would know that you don't just take off work for a week. You let your employer know about that circumstances.

Dishonesty related to employment essentially means the intent of the employee to deceive the employer on a material fact, and it includes but is not limited to making a false statement on an employment application and falsifying the

employer's records.

MR. DOOLEY: May I make a simple suggestion for the language?

MS. MYERS: Sure.

MR. DOOLEY: I think that the definition precede the inclusion, in other words, that dishonesty related to employment means the intent to deceive the employer on a material fact and includes the making of a false statement on an employment application. Because it looks like you are defining before the -- with the inclusion, not the actual intent to deceive.

MS. MYERS: Okay.

Next page. We are talking about when a company's rules are reasonable and it has to be reasonable rules related to their job duties, to normal business requirement or practice for your occupation or industry, or when it's required by law or regulation.

The department will find that -- it also says the

claimant had to have known or should have known about the company rule -- about a company rule -- if they are fired, for instance, for disregarding that rule. What we are saying is that they have to have been in some manner told about the rule, whether it's through an orientation, a copy of the rules through a handbook or some other means, or it's posted in a public area like the lunchroom in a language

that the person can understand. Those types of things. We would just make an effort to find did the employee notify the claimant that that was a rule.

You first and then one comment over here. Tom first.

MR. DOOLEY: The only suggestion from the employers

with regard to the "knew or should have known about a company rule" issue -- the open-ended nature of "in a language that can be understood by you" -- the suggestion that we would make because of the broadness of the number of cultures and languages that may be provided out there, in order to avoid this technicality argument, one of the requests that we make is that we do it in the same languages as required of the department to give notice. The department has, I think, 20 or 25 languages that they are required --

MS. MYERS: Twelve.

MR. DOOLEY: -- 12 languages that they are required to post information in. And we would just ask that the rule comport with that. That the employers should be required to put it in the same language as the unemployment insurance does.

MS. MYERS: Dale and then Dan.

MR. TUVEY: Well, I'm going to go a little farther than that, and I have the same objections because this business about being understood by you is very difficult. And for an

employer to have to publish an entire personnel handbook, for example, in 12 languages, if that is the number that the department uses, or in however many languages there may be existence in the world because they may have some person that speaks that language -- I think the burden is on the employee to understand what it is that they are supposed to do and that in English ought to be sufficient for any instructions. And if, you know, they don't understand English well enough, it ought to be their responsibility to

find out what it is they are supposed to do in their job.

MR. SEXTON: What if the employer knew that the employee didn't speak English when the employee was hired?

MR. TUVEY: Well, I think employers are going to give them instructions in English, and if they can't understand it, they are going to have to get themselves a translator or the employer will assist them in doing that for them. But to have to publish, for example, an entire personnel manual in some exotic language is unreasonable.

MS. MYERS: What we are talking about is not imposing rules on the employer as to what they have to translate. We're saying, if the claimant is discharged for violating a rule, is it reasonable that they should have known about that rule if no one conveyed it to them in their language or at any point --

MR. DOOLEY: Well, that's what it says here.

MS. MYERS: Right.

MR. DOOLEY: And the rule is conveyed in a language that can be understood by you. I mean, that's -- if that's not the intent of the department, that's not what's clear in the rule thing here. You asked that it be conveyed or posted in that language.

MR. NICHOLS: I wasn't going to comment on that, but I will make a brief one. And it seems to me that if the employer knows that the claimant doesn't speak English -- it's the employer's burden not the claimant's burden to make the rules understandable. It should be the employer's burden to make a rule understandable. If the employer knows that when they hire the claimant, it's the employer's burden

to find somebody who can translate for them.

MS. MYERS: Hold on a second.

MR. TUVEY: It's the employee's burden to figure out what they are supposed to do.

MR. NICHOLS: Apart from that issue, I have an objection to 192-150-210(4). In that it's all disjunctive. The first clause of that section says, "A company rule is reasonable if it is related to your job duties..." and the rest of it is disjunctive. In other words, the rest of it has "or's" throughout it. So if a company rule is related to a claimant's job duties under this definition, it's reasonable. There are all sorts of company rules that are

related to a claimant's job duties that may not be

reasonable. So I have a problem with that.

MS. MYERS: And, Mark, you had a comment?

MR. JOHNSON: I think it was addressed. Thanks, Juanita.

MS. MYERS: Anyone else before we move on?

Next section, 192-150-215. That's a housekeeping change. We have simply added the language about gross misconduct and any statutes, RCW 50.20.066, which is the statute that deals with gross misconduct. So that's just a housekeeping change in that section.

Section 220 on that page, "Discharges for gross misconduct or for felony or gross misdemeanor."

The first part of that is just housekeeping changes. Again, provisions of RCW 50.20.065 applies to claims with an effective date prior to January 4, 2004. Provisions of 50.20.066 apply to claims of an effective date of January 4

or later.

MR. SEXTON: Juanita.

MS. MYERS: Yes.

MR. SEXTON: Back on 192-150-220, "Discharges for gross misconduct or for felony or gross misdemeanor." You know, I'm wondering why the criminal act by the employee couldn't be similar to the reporting and the criminal act of the employer. You know, if there's got to be a burden of proof

on the employee when the employer is committing criminal activity, you know, shouldn't there be some fact-finding about the employee committing criminal activity also?

MS. MYERS: Certainly. Right. And the statute provides that the individual must either have been convicted

of the criminal act or have admitted it to a competent authority.

MR. SEXTON: Never mind.

MS. MYERS: And we have defined "competent authority" here the same as under our current regulation. The department, we are not a competent authority in this area. We don't accept admissions that are made to the employer. We don't accept admissions made to any staff person from the department.

The reason for that is that the department does not want to end up being a witness in other criminal proceedings that may result that they -- well, they say, you know, the person admitted -- the department says they admitted to the department that they committed theft. Well, the person who took that statement is probably then going to have to -- could be potentially called in as a witness in a criminal

proceeding. And that is not something that we want to take on or have the staff or the attorney general time at this point.

Now, the suggestion was received at -- I think at the

teleconference that we had with AWB that we contact Oregon because they do accept admissions made to their staff. And we are in the process of doing that, but we haven't gotten to that yet. We've been sick or had snow. But we are going to look at that to just see how Oregon gets around that provision.

MR. DOOLEY: Are we on 220 now?

MS. MYERS: Yes, we are.

MR. DOOLEY: Dan, are you done on that?

MR. SEXTON: Yeah.

MR. DOOLEY: Two things on the competent authority piece. If it's the case that the department doesn't want to consider themselves to be a competent authority, what would happen in the circumstances where they are in a UI hearing with the administrative law judge from the department who is -- I believe the departmental head of their office of administrative --

MS. MYERS: That is a separate administrator agency.

MR. DOOLEY: So they would be a regulatory agency?

MS. MYERS: Well, they would be --

MR. DOOLEY: They are an administrative law judge.

MR. SEXTON: But the judge would be a competent authority.

MR. DOOLEY: Right. Okay. But if they admitted it to the assistant attorney general for the department it

wouldn't be.

MS. MYERS: It would not be. In fact, she has specifically asked that we take her out.

MR. DOOLEY: And then the second piece. While we understand that in (3)(c)(1)(i) that it requires that a wage credit be only canceled upon admission of a criminal act if you admit to each and every element of the criminal act which caused you to be discharged, well, I think we have addressed this before. Every crime has a lot of elements, and it's confused in this sense because you may have a number of charges against you. And I guess the question becomes if they admit and are found guilty of one crime in all aspects of that crime, it's not clear to us that they

are going to be -- that their wage credits are going to be challenged, because they may have ten changes against them and only be found guilty of one. And then you take the subset of that, which is they admitted to ten of the 11 elements of that crime in order to --

MS. MYERS: We can work on the wording. And certainly the intent is we are talking about the elements of a specific criminal act. They are found guilty of an act but not the other five. If that one act that they are found guilty of is still associated with their work, then, yes, they still would be disqualified. We can work on the wording.

MR. DOOLEY: We would just request some variation in the future rules that -- the fact that each crime has a number of elements and that a criminal charge is one thing, and you could have many of them.

MS. MYERS: The section that's new from the preexisting rule is section (3)(b), claims with an effective date of January 4, 2004, and later: If you have been discharged for gross misconduct connected with your work, all your hourly wage credits based on that employment since the beginning of your base period will be canceled. And then (ii): If your wage credits with this employer are fewer than 680 hours, the balance of wage credit up to 680 hours will be canceled proportionately among your base period employers according to each employer's share of your base period wages. Wages from each employer will be removed from the most recent quarter in which wages were reported.

We got a lot of questions on this from staff as opposed

to -- say they only worked 50 hours from their employer who fired them. So what do we do? Under the law we have to take 630 hours from their base period, and they have four base period employers -- four other base period employers. Who do we take those wages from? We are going to do it proportionately. We have developed a cheat sheet on how we would calculate that based on the number of hours and their wages. We will do it proportionately, and we will start

deducting from the most recent quarter back as kind of a procedural piece here.

Dan.

MR. SEXTON: To change your line of thought there a

little bit, you know, back to where Tom was, I think, (3)(c)(i), "you admit to each and every element of the criminal act which caused you to be discharged." I think this is probably pretty good language the way it is. I left the tool shed unlocked. I did that, but I did not steel the equipment in the tool shed. So, yes, I admit that I did this or I did that. There are elements that may not be criminal by themselves.

MR. DOOLEY: I think the issue here, Dan, in our minds is that each of those would be separate charges. One is negligence, one is stealing, one is this. If you admit to the stealing -- you can admit to the negligence, not admit to the stealing, but it's still a criminal activity that caused your discharge.

MR. SEXTON: And my point of my question is, what if each and every element of the criminal act -- you said negligence by itself is not necessarily criminal.

MR. DOOLEY: Then you would be convicted of it then. You wouldn't have admitted it.

MR. SEXTON: I admit to it. I'm not convicted of it, but I admitted to it. I admitted that, "Sure, I did that."

And my employer is assuming that step one led to step B and step C. I did this, but I didn't do this.

MR. DOOLEY: We are getting into -- I guess the issue is we are just asking for some clarity. There are different elements for each criminal charge. And you should have to admit to all of them in order to be disqualified or have your wage credits removed. I think we are in agreement there, Dan.

Under a charge there are ten element of that charge. You should have to admit to all of those ten in order to be disqualified, I think is what the department is saying in that piece.

MS. MYERS: Right. If there are six different charges, you don't have to admit to every charge. But you do have to admit to all elements of each charge.

MR. TUVEY: But you don't have to admit to all charges.

MS. MYERS: Right.

Any questions before we move on to job search?

The legislation made a number of changes to the job search monitoring program. First off, for claims filed January 4 or later, an individual has to make at least three employer contacts or three documented in-person activities at their local worksource office or accommodations. Basically, they have to do three. Under the prior law an individual could use three employer contacts or one

in-person activity at the worksource office to meet their requirement. But it's now three of something, three job search activities or three employer contacts or two and one or whatever. They do have to do three.

Also I did add in here, and this was just a language cleanup because it was just neglected the first time around in section (1), you must be actively seeking work unless you are attached to an employer, participating in a training program approved by the commissioner, or on strike or locked out by your employer as provided in 50.20.090.

Just housekeeping changes. People on strike or locked out are not required to look for work under another section

of state law. They usually look for benefits.

The statute also requires that individuals who are subject to a labor agreement, basically, referral union members, have to comply with their union referral dispatch requirements. So even though they are exempt from the job search monitoring program, they have to meet other requirements. We have added language in section(3)(c) which clarifies what that means: You must be in good standing with your union, eligible for dispatch, and comply with your union's dispatch or referral requirements. Their benefits could be denied for any weeks that they fail to meet those requirements, and they could be directed to seek work outside their union if they fail to remain in good standing

with their union.

Just to let you know, we send a verification letter to the union when an individual applies for benefits and indicates that they are a member of the referral union. They send that notification to the union saying if this person is eligible for dispatch in good standing. If the response is no, then we send it directly to the complaint saying you have to look for work elsewhere.

We have also developed a new questionnaire that will go to the union when an employer raises a question about when there's cause for doubting established that an individual is meeting their union's dispatch requirements we would send a letter to the union saying, you know, "We have a question about this person's availability for this particular week: Was this person available? Were they in good standing? Were they eligibility for dispatch? Did they refuse any

offers for work? And that type of question, just to check with the union to see what that individual did during that week.

The law also requires us to monitor the job search activities of claimants who live in other states as well as those who live in this state. And we are asked or required to set up contracts with other states.

Initially, we had thought that there weren't going to be any states interested in it. And I believe we are over

24 or 25. And California has changed their mind. They initially told us no. And California, I think, is where the largest number of our interstate claimants live. We are currently working on contracts with those states that have

agreed.

We have defined what an in-person job search activity is. For people who live within the state it's an activity that's documented in our department's internal tracking system where we document what services are given to claimants and whatever is recognized or documented in their state as far as qualifying for their residence.

Tracking job search activities, the next rule, 015. The first change is a housekeeping change that individuals don't have to keep a record or log of their job search contacts because under the statute they are exempt if they are a member of a full referral union, if they are allowed benefits because they left work to protect themselves or a member of their immediate family from domestic violence or stalking, or they're otherwise exempt from a previous rule, which is a strike walkout, or if they are still attached to

their employer. The employer has a two-week layoff and they put them on standby for two weeks.

There's no change to the description of what information needs to be kept in the log. We did add additional language in (4). We had originally said

claimants should keep a log until 60 days after the end of their benefit year.

But as you are probably aware, we have been in extended benefits now for quite some time. And some people are now over a year past their benefit year. But they are still required to seek work and keep a job search log while receiving benefits. We've added that qualifier that they need to keep them either 60 days past the end of their

benefit year or 60 days past the date when the final payment on that claim ends, whichever is later. Just as I say, we have people who have been on unemployment benefits now for two years.

The next section is simply a language cleanup. They are technical changes to the job search review and eligibility review.

Same with 192-180-025. We have added clarification that the interview may take place by phone and that would be for the states that don't contract with us. So if there's a job search interview and the state has not greed to contract with us, our state will conduct those interviews by telephone.

The (3) of that rule: How many weeks will be reviewed? We will continue our current practice of when they call in for their initial appointment to review one week; however,

if the job search documentation for that week is

unsatisfactory, they don't appear for their interview, they would be scheduled for a second interview in which all weeks' claims will be reviewed. And we have defined what we mean by "all weeks."

The reason for that is that the new statute states that an individual who does not provide documentation to show that they have conducted their job search for all weeks can be denied benefits for all weeks in which they failed to meet all requirements. And we get at that by reviewing all weeks.

And (iv) is new since you saw the draft. Oh, no. I'm sorry. It's not. It did go out in the draft. It's new

since the stakeholder meetings.

As you probably know, the governor vetoed the section of the legislation that would have required individuals to provide proof of their identity at the time they filed the initial claim or weekly claim. This was vetoed because it would be very difficult for the department to do at the time of initial application, operating as we do now in a telephone environment. Or we now also get about a third of our claims filing on the Internet. However, the department is committed reduce things associated with solving fraudulent claims or identify theft. So since the individual is coming in to meet with a person, in this case, for a job search review, this is the point in which they

need to provide some identification or some proof of identity. That would include either state or government photo identification or two of the following government-issued documents: And those are the same documents that are required on an I-9 eligibility for work verification.

And what will happen is the person who takes the work search document will simply make a copy of it and attach it to their interview log for that individual just to show that they -- if they have any questions -- I know, I will admit our staff are not document experts, but if they have a question about the person's identity, then they would notify the telecenter of what we call an "issue reporting log," and the telecenter would take additional steps to verify either through the telecenter or thorough our office of special investigations to verify if their identity appeared

questionable.

Next section -- were there comments on that?

MR. TUVEY: I was wanting to go back a fair number of sections to 180-010, and specifically, these are at (3) -- well, (3)(a), I guess, or whatever. It's regarding weekly job search requirements. And you talked about it changing from either three contacts or one, you know, job search center activity to three job search center activities. I guess I would like to see some place in this section or some

discussion -- something about some limits on the number of times that you can simply go into the job search center and have that qualify as their work search.

I have had people who have done nothing for months as at a time, never contacted an actual employer -- I wouldn't say in their life, but in their claim life. And that's been okay, because they have literally met the requirements of going to the job search center. At some point there should be a requirement that they actually contact an employer, rather than just go into the center. This is a big improvement to go in three times instead of one, but if that's all that's happening, that's not quit enough.

Another thing I'm a little concerned about is, it says what is a job search contact? Up until now, it's been pretty well established that you have to make an in-person contact. Now we're going to employers in person or by telephone as a specific allowed activity, not as a part of an otherwise, quote, "active," work search.

Not everybody has to go to every employer in person. But to say now telephone contacts are okay as a specific

requirement or as a specific requirement -- what's the right word -- a specifically sanctioned activity, I think is too much. At some point assuming you are in the kind of occupation that is typically done with in-person contact with employers, to simply telephone is not sufficient.

So I will object to the change here of specifically saying that it's okay to -- it says, usually the contact is in person or telephone. You may use other ones. That specifically is telling people you just need to get on the phone. That's just not right.

MS. MYERS: I do want to clarify that this particular section has been in rule since --

MR. TUVEY: I understand that.

MS. MYERS: It's not a change.

MR. TUVEY: I do understand that, and I don't like it and never have.

MS. MYERS: Okay.

MR. TUVEY: It's an opportunity to tell you that you've got to change it.

Now I have a question. The next thing about job search activities, it says "Service, Knowledge and Information Exchange System. I don't know what you have to do -- how extensive does your activity -- or what's -- can you get in there and check out the computers and you are out of there? Or what do you have to do?

MS. MYERS: It has to be a -- the SKIES system tracks certain activities. And Susan can probably tell you more than I can. But it has to be something concrete. You can't go in and look at the job board, and you can't just go in

and search the Net or register at monster.com for something

that's not acceptable.

Further, we didn't put it in the rule, but we have fairly extensive procedures as to what constitutes an in-person activity. You can't keep getting credit for the same class if you take it over and over. If you choose to take it again, you still have to make three other contacts. It has to be something -- when we stay it's trackable, those are usually things like it means you have produced a product or met with the job search counselor and received a search.

MR. TUVEY: I have no problem with that. It's just a question.

MS. MYERS: Right.

MR. TUVEY: Let's see. This is 192-180-025. It's talking about how many weeks will be reviewed. And it says the interviewer will review at least one week. And if the job search documentation is unsatisfactory or does not appear, they will be scheduled for a second interview. I don't know why you gave them a second bite of the apple. If they don't do it, chop them.

MS. MYERS: If that one week is not acceptable, they could still be denied for that one week. But now we want to look at all your weeks. You didn't meet it this time, so now we need all weeks. They could be denied for that week.

MR. TUVEY: Could be.

MS. MYERS: Well, it would depend on the circumstances,

probably, but I don't know.

MR. DOOLEY: Why would they ask them back for a second interview?

MS. MYERS: We would ask for all weeks then.

MR. DOOLEY: I know that, but you wouldn't bring them in for all unless they were going to deny them for the one, right?

MS. MYERS: Or unless we found their week was unsatisfactory.

MR. DOOLEY: And unsatisfactory means that they were denied for that week --

MR. TUVEY: What I'm afraid is going to happen is they're going to say, "This isn't go enough, so come on in a show me." And then they are going to say, "This is what I real meant to say."

I have no problem with bringing them in. I think that's a good idea to bring them in and have them check all the weeks. But before you do that, at the same time you are calling them in for this more extensive review, send them a denial and say, "You didn't tell us."

MS. MYERS: Well, that's not exactly how it works.

MR. TUVEY: It should be. That's what I'm telling you.

MS. MYERS: Let me clarify. When somebody comes in and we note -- the worksource staff are not adjudicators. What they will do is say, "Your work search does not appear to be

satisfactory. I'm notifying the telecenter that we have an issue on this week. And in the meantime, I'm going to schedule you for a review of all weeks." They send a notice

to the telecenter. The telecenter issues an advice of rights. We always give the claimant an advice of rights saying, "We believe there's a question about your eligibility for this week because of your work search documentation." And then they do the normal fact-finding as they would there. Again, it most likely could -- would result in a denial, but we still have the give the person due process.

MR. TUVEY: The other one I was reacting to more --as much as or probably more, it says, or you don't appear for the JSR interview. Wouldn't they be disqualified pretty automatically?

MS. MYERS: On that week, yes, they would get a denial for a failure to report for that week. But that also raises a question for their eligibility for other weeks. The issue wouldn't be work search. It would be a did-not-report issue

and send an advice of rights that you did not report for your scheduled job search interview.

Quite frankly, we had about right now or prior to this we had about a 25 to 30 percent no-show rate on our interviews. What they would do is simply reschedule people for another interview. But now we are telling them in a

letter, "If you miss this appointment, your next interview you will be rescheduled but it will be for all weeks, and you have been reported for this week." So the letter has changed. You could be denied for this week for failure to show up. And if they can't make their interview, for example, it's on a Tuesday morning when we they have already had a job interview scheduled for that day, they have to

show up by Friday of that week.

MR. DOOLEY: With all weeks?

MS. MYERS: With just that one week, if they are scheduled for that one-week review. But it's pretty much for employment or Dan's example of a car wreck, but then you've got an ongoing availability issue.

MR. SEXTON: What about the act of God that happened on --

MS. MYERS: Well, our offices were closed.

MR. SEXTON: So if the office was closed --

MR. TUVEY: I guess you were up at penalties.

MS. MYERS: The section we have added there --

MR. TUVEY: I think I did have one comment there.

MS. MYERS: The addition is, "What is the penalty if I don't attend a JSR, job search review, that has been scheduled to review all weeks claimed?"

So now you don't show up. You either don't show up, you come but you don't have your logs with you, or you have

your logs with you, but they don't show that you did the job search that was required. We are going to treat this as nondisclosure under 50.20.160(3). The reason we put that in there is because we can only -- once we have allowed benefits, we can only go back -- if it's been more than 30 days since the decision for benefits were paid out, we can only go back and deny benefits at a later time in the case of fraud, misrepresentation, or nondisclosure. And so this is nondisclosure. You didn't disclose your work search when it was required.

Also we are changing the questions that people call in

-- when they call in and file their weekly claim. Right now it just says, "Did you make a job search as you were directed to?" Now it's going to say -- it's going to be a sophisticated system. If their claim was effective January 4 or later, it's going to make to you make three employer contacts or participate in three worksource activities this week. It's asking specific questions. If it's before it will say, "Did you make three employer contacts or participate in a documented activity?" Of course, people who are referral union members or in approved training because they don't have to make a work search. But those individual who do are going to get more specific questions.

MR. TUVEY: One more. The last line in there it says if you don't do all these things, if you fail to appear and

blah, blah, blah, your benefits may be denied. I would say will be denied.

MR. SEXTON: There may be extenuating circumstances.

MR. TUVEY: Then you can redetermine, but if they don't -- if they haven't showed up --

MS. MYERS: Okay. We are down to half an hour, so let's move forward.

The next section, "Directive to attend job search workshop or training course."

That is simply a cleanup for housekeeping changes to add references to the new statute number and the job search monitoring program.

MR. TUVEY: This is on that section in (6) when you are attending a job search --

MS. MYERS: (6)?

MR. TUVEY: Well, it's -- 040 is what I'm talking about.

MS. MYERS: Oh, you have an earlier draft.

MR. TUVEY: Yeah, I do. I'm sorry.

MS. MYERS: It's section (5).

MR. TUVEY: When attending a job search workshop or training course, you will not be ineligible for benefits for failure to be available for work, to actively seek work, or to apply for or accept suitable work. The one of those is 080. If they are given a job offer so that they will be

disqualified under 080, what's the object here? It's for the person to go back to work under a suitable job. So why

in the world would they have good cause for not accepting a suitable job because they're in a workshop that's teaching them how to get a job? Keep your eye on the ball. It doesn't make sense.

MS. MYERS: What it was intended to do is, if we have directed them to attend a job search work shop, we are also going to direct them to apply. We are also going to give them a referral which is under 080, because they can't be in two place at once.

MR. TUVEY: But the employer may call them and say, "We want to bring you back to work." So to me that's the object of the game. Why would they not be disqualified?

MR. DOOLEY: That would be a referral under 080, not offer of bona fide employment.

MR. TUVEY: It's a refusal. If an employer offers them a job and they refuse it --

MR. DOOLEY: Yes. But that's not covered under this

section.

MS. MYERS: It does say that. So I will taking a look at it.

MR. TUVEY: That's what it says.

MS. MYERS: The next section, "Disqualification of students."

It's simply a housekeeping change in that one also. Down in (5) we have changed the reference to 50.20.010; it used to be (3), now it's (1)(c).

The next section, 50.20.240, we have just added that in about the job search monitoring requirements. So the students say that they are subject to that. Basically this

is the nonconflicting schooling. They are taking a part-time class, evening class or whatever. They are still subject to the same requirements as anybody else.

MR. TUVEY: This is a small thing I think, but a question in section (3)(b) it says, "When you apply, you demonstrate by a preponderance of the evidence..." I guess the question is why is "when you apply" in there? It seems like anytime they demonstrate by a preponderance of the evidence that their student status does not -- they are not available for work. And it should be that if in the middle of the claim they decide to go to school or they are in school and the employer says that this person is in school, give me a decision -- I just don't know. I just don't know why that's in there. It seems like it confusing.

MS. MYERS: Okay.

Do we need a quick break?

(Recess taken.)

MS. MYERS: Actually, the next two sections are pretty minor changes. 192-200-010, that is simply moving that rule

verbatim to a new section.

Now 030, "Unemployment benefits while in training.

You can let me know what you object to. It's not changing the meaning. It's just correcting the statute.

MR. TUVEY: The biggest thing is that it says, "You must notify the department if you discontinue or suspend training or reduce enrollment to less than full time," or -- the continuation should be "or that you change your course of study." Because we have had people go into class for one thing and in the middle of it they decide I want to do

something else, and they are in training and being certified that they are making satisfactory progress and all of that stuff. So if they change their course of study they should have to inform you.

And, again, down in (2) there is a "may" that should be "will." It says, "If you drop below full time and are not making satisfactory progress you" will "show that you are looking for work."

MS. MYERS: I neglected to point out that we did add something that wasn't in the draft rules on (1)(b) where it originally said that you must be making satisfactory progress in training. And I added "as defined in WAC 192-270-065," which is what we use for training. We have an actual definition for satisfactory progress. And we have had questions about what does satisfactory progress mean for

people in commissioner approved training, and so we have made it consistent.

Jim.

MR. TUSLER: I would object to taking the "may" to a "will." There are many situations where workers are in training and it their grades may be unsatisfactory in mid term. That's the requirement that the schools notify the department or the funder for that training. It's a perfect time for improvement. To pull somebody's unemployment when they've made a long-term obligation without some remedial or some corrective action, it defeats the whole purpose of training for a different career and demand. I think the "may" is very appropriate there. The department and the funders of continuing education need some flexibility.

MS. MYERS: Okay.

MR. DOOLEY: Juanita, not to belabor this, it appears that (1) of that rule just from a construction standpoint -- "To be eligible for unemployment benefits while in training, the following criteria must be met:" (a) you must be full time; (b) you have to make satisfactory progress; (c) seems kind of out of place.

MS. MYERS: It should be maybe a sub (2) there.

MR. DOOLEY: Yeah.

MS. MYERS: And the next one on (3).

MR. DOOLEY: So it should be (a) and (b), and then (c)

or (3) should be, you must notify the department if you discontinue or suspend training, reduce your load, change

your course or whatever there.

MS. MYERS: Okay.

MR. DOOLEY: And then (2) if that becomes a (3), I would say if you don't meet the criteria in (1) or (2), you may be required to show your availability.

MR. TUSLER: Just as practical matter, it's the school that's forcing that on the claimant more than the claimant changing the course or dropping out of school.

MS. MYERS: Okay.

Is that enough for that section?

We will go on to "Overpayment Notice and Assessment."

I'm just going to briefly just identify what the changes were, and then I will hear from Dale what concerns he has with regard to specific language, rather than going through section by section.

Primarily these rules are amended to clarify that under

the new statute an individual who is denied benefits for misconduct is not eligibility for a waiver of those overpayments and is not eligible for the offer in compromise that's in the statute.

And so where we have added clarification to the rules is those sections where we have talked about who is at fault, who can get a waiver under equity and good

conscience, and who is eligible for an offer in compromise. We have added language to clarify that that does not apply to people who are discharged for misconduct or gross misconduct. That is true even if the overpayment is not the fault of the claimant. For example, the claimant disclosed all the facts that led to their discharge at the time that

they applied for unemployment benefits. The department determined that there was no misconduct and allowed benefits. The employer appeals and the department's decision is overturned by the office of administrative hearings who rules that there was misconduct. All those benefits are recoverable. We can't grant a waiver. We can't accept an offer in compromise.

MR. DOOLEY: Is that on both gross misconduct and misconduct?

MS. MYERS: Yes. On this statute it's listed in this section, which is both gross misconduct and misconduct.

MR. DOOLEY: So shouldn't the rule refer to both misconduct and gross misconduct? Right now it only refers to the result of a discharge under gross misconduct.

MS. MYERS: That's where we're talking when the claimant is considered to be at fault.

MR. DOOLEY: Okay.

MS. MYERS: And then we added language on the equity and good conscience where we say, (1)(a)(b), the department

will not consider or grant waiver of an overpayment and will not consider an offer in compromise of an overpayment based on an overpayment decision written by a state other than Washington -- that's part of the interstate agreement -- the result of a conditional payment; or for claims with an effective date January 4, the result of being discharged for misconduct or gross misconduct.

MR. DOOLEY: Okay.

MS. MYERS: So we are saying for gross misconduct you are at fault.

MR. DOOLEY: Right.

MS. MYERS: But this one, not only are you at fault, but we aren't going to consider waiver or offer in compromise.

And the next page, 192-230-100, the only significant change made to that rule is the addition of the very last sentence. Because that paragraph talks also about when individuals can get an offer in compromise. And if we add the sentence, "An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.066," which is a misconduct or gross misconduct statute. Okay?

Any comments about the overpayment rules?

MR. TUVEY: Well, I guess I'm a little concerned about 192-220-020 -- what would this be -- (e) or (iii) -- I don't

know. Where it says, "You had notice that the information should have been reported."

MS. MYERS: Okay.

MR. TUVEY: You know, it says just above that, it says, "The payment of these benefits was based on incorrect information or a failure to furnish information which you should have provided as outlined in the information for claimants booklet, claimant directives and other reasonable written communications..." and then I think redundantly and adding some confusion you go to define that perhaps those weren't good enough notice.

MS. MYERS: Okay.

MR. TUVEY: So I think that should be eliminated.

And then over on -- what is this -- (4)(a), it says one

of the reasons that you would be considered to be without fault is the department erroneously removed a payment stop resulting in improper payment. If the claimant has already received a determination saying that they are not eligibility for some particular reason or period of time or whatever and the check shows up in the mail, they recently ought to have known that they are not entitled to that.

MS. MYERS: Generally happens here is we haven't made a decision yet. We have got an open issue, so it's pending payment.

MR. TUVEY: I understand. I don't have a problem with

that. But when they have received a determination and get

one by error, there ought to be a presumption that they know that they are not supposed to have it, and they should not be without fault if they cash it.

MR. TUVEY: The next one is 220-030(3) where it says, Your failure to provide such information within ten days from the date of request will result in the department making the decision -- it says "based on available information regarding your eligibility for waiver." It seems to me that if they don't provide the information that the waiver ought to be denied.

And then in the next section, 230-100, looking at number (5), it says, An offer in compromise -- let me see -- will not be approved if the over payment was caused by a denial, unless there are unusual circumstances that would justify a compromise.

I guess I would object to anything that was a fraudulent overpayment there being unusual circumstances

that could justify not recovering a fraudulent overpayment. So I would move that down to where it says that that will not be approved at any time.

MS. CRONE: I have a question. Can you make an offer in compromise if it's been a fraudulent overpayment?

MS. MYERS: They can make an offer in compromise, but as it says here --

MS. CRONE: I don't remember one ever being done in my experience.

MS. MYERS: I don't remember one ever being granted on a fraud.

Okay. And next two sections are just housekeeping

changes. They are talking about how extended benefits program and basically saying that they -- the first one that applies to claims effective prior to January 4 is after that date there is no marital domestic quit. Per the 050(4), it's ten weeks in-person reporting. And the next section is simply a change in the statute number and it's (4).

So if we are agreed, we can move on to 192-300-050 and start a little over 15 minutes on tax rules.

Section "Predecessor-successor relationship defined." The only new section is the definition of simultaneous acquisition. There was originally some language discussed around putting in a definition of substantial continuity of ownership. However, because we have got a lot of feedback about that, and after we looked at the law again, that section of the law doesn't take effect until January of 2005. We felt we had some additional time to arrive at a definition. The federal government is looking at making a

definition of that subject, and in addition the Department of Labor & Industries is looking at defining the term "substantial continuity of ownership." We were hoping that

before we need to adopt a rule that they would come up with one so we could be consistent to the extent possible.

Any comments on that rule? Okay.

Next section, 192-310-010, "Employer reports."

We have just added language clarifying that the quarterly tax and wage reports must be filed in one of the following formats. And we listed the formats we would accept, which basically is electronically using one of the three versions listed there or paper forms supplied by the

department or certified versions of those forms. Unfortunately we do get some employers who report on backs of envelopes and paper napkins, and they are very difficult for us to process. So we prefer electronic, but we aren't requiring that an individual do electronic. They can still do paper if they use our forms or use the same information that we have included on our forms.

That's the major change. We deleted the report form instruction section because form charges aren't really -- don't rise to the level of the rule, but if they change the rules, we will change the rules.

"Application of payments." We did make amendments to that rule. The statute sets up several new penalty fees for employers and also authorizes the department to collect or assess reasonable audit expenses for reasonable expenses for auditing or collecting monies when an employer has willfully

misrepresented the amount of their payroll. So we had to change the application of payments section to account for those new penalties.

So when we get a tax payment, we would apply it in the order listed, costs of the audit and collection, if any; payment for willful misrepresentation of payroll, if any; lien fees; warrant fees; late tax report penalty; penalties for incomplete reporting or reporting using an incorrect format; late tax payment penalty, as opposed to reporting; interest charges; and then finally, after we take off anything for any outstanding additional charges, we would apply it to their basic tax payment.

Next section, Amends, is fairly substantially the rule

regarding when an employer is subject to penalty.

An individual who files a late tax report is subject to a $25 penalty, which was increased from $10, which is what we have in place now. Again, that was due to the waive of cost.

The report has to be complete and in the format required by the commissioner. If it's incomplete -- we have defined what that means. It's either the entire wage report isn't submitted or they leave off an entire element. There are a number of employers who don't report hours or sometimes social surety numbers -- and trying to find them by name is not easy -- or provided they have hours but no

wages, et cetera, or they leave off a significant number of

employees or a significant number of identifying information, or they don't give us their reference number or UBI number. Those are all included in what is an incomplete or incorrect format, which is a format that was previously discussed in the other rules.

If they don't file or if they file an incomplete report, the penalty is $250 or 10 percent of the quarterly contributions for each occurrence, whichever is less. And in most cases, it's going to be the 10 percent.

When no quarterly tax is due and an employer has submitted an incomplete report, we follow this schedule: The first occurrence is a $75 penalty; the second occurrence is $150, the third and subsequent occurrences are $250.

For filing a tax report in an incorrect format, the penalty, again, is $250 or 10 percent of the quarterly contributions, whichever is less. When no tax is due, but

they file in an incorrect format, the first occurrence would be $150; the second and subsequent occurrences would be $250.

And let me clarify right here -- we didn't write it into rule because it's in another statute -- the department is required to apply technical assistance to employers before assessing penalties. We are doing that. We will continue doing that.

What we are talking about here is when the employer has received technical assistance, has been told what the correct format is or what the correct reporting period is but continually fails to comply with our requirements. There are some, for example, large corporations based in

other states that because we are the only state that requires hours won't report hours. So they either will or they will get a penalty fee assessed, which will offset the cost of doing that.

"Knowingly misrepresenting amount of payroll." There are penalties for that. And an employer, if they knowingly misrepresent to the department the amount of their payroll, the employer is liable for a penalty of ten times the different between what they did pay and what they should have paid. And that penalty is in addition to the amount they have should have paid. So there is the amount they should have paid, plus the penalty on top of that. And in addition, the employer could be liable to the department for reasonable expenses of auditing their books and collecting such sums.

This is all a fairly substantial change to the law.

Before it just allowed for a ten-dollar penalty for any incomplete forms. Now it's up to $250 or 10 percent of the amount of the contributions due.

"Conditions for relief of benefit charges due to

voluntary quit."

The changes to this rule were simply housekeeping changes. (1) For claims with an effective date prior to January 4, 2004, the employer can request a relief of charges under 50.20.020(2).

(2) for claims effective after January 4, 2004, or later, they can request relief of charges under 50.29.021(3). It's just to clarify which statute the relief of charges may be requested under.

And the rest of that rule remains the same.

There is a new section, 192-320-075.

And as I mentioned at the very beginning under certain sections the separating employer is going to be liable for 100 percent of the charges.

MR. DOOLEY: The reasons for voluntary quit considered attributable to employer.

MS. MYERS: Yes.

MR. DOOLEY: This is all old language that references voluntary quits that no longer exist.

MS. MYERS: Okay. Let me just clarify that here. That's what I had originally thought when I had started to amend this section. But these are people who, you are right, they would not have good cause for voluntarily quitting. But say somebody quit because -- what could we have in here --

MR. DOOLEY: Being in jail.

MS. MYERS: For being in jail. Now certainly they don't have good cause, but they may have requalified for benefits. So now they served their penalty period and now they have requalified, and they base -- that employer for whom they quit is still part of that base year. That employer still and could request that quit wasn't attributable to them. And unless they can request relief of charges, which is still allowed for in the statute, they're going to be charged, unless they -- so we need to word in here that it wasn't attributable to them. And you are right, they are not going to get benefits. But once they serve their disqualification period, that employer needs to

have an opportunity to request relief of charges. So they are in charge for benefits paid on that claim.

MR. DOOLEY: We may want to -- this is the section of the rule that caused the most angst and the drive to have a brand-new in-statute voluntary quit section.

MS. MYERS: Okay.

MR. DOOLEY: So having that survive may cause some angst to continue. Even though I think you are right in the facit that the relief of charges issues should refer to some things or maybe in the abstract, but maybe not so specific as to refer to things that no longer would qualify. Do you know what I mean?

MS. MYERS: Yeah.

MR. DOOLEY: I know that you know and the department knows that being in jail was one of the things that everyone highlighted near as something that --

MS. MYERS: Right. It's tough for a person to get benefits if they were in jail.

MR. DOOLEY: And it's because of this.

MS. MYERS: Right. They may have been separated when they were in jail. And certainly they wouldn't qualify for benefits if that's why they were quit or discharged, but they may have purged that disqualification. And at the time they come in -- they serve their seven weeks, and they have this job and they earn --

MR. DOOLEY: Then if that's the case, then I think what it should do is not refer to the voluntary quit. It should refer to the requalification.

MS. MYERS: Okay.

MS. MYERS: You know what I'm saying? On the other side. Not the cause of the quit but the --

MS. MYERS: Okay.

MR. DOOLEY: Like the separating -- I've had another employer claim it's the domestic responsibility to do the owner's disability, but I have requalified. Even though I didn't get benefits under a voluntary quit, I have requalified.

And the same thing goes for the next section of attributable to the employers.

MS. CRONE: I agree with Tom. I thought sometimes that that was what was causing so much of the aggravation was

this concern about what was really requalifying that wasn't going to be changed by changing the eligibility tradition or if somebody could get benefits and cause why someone was going to quit.

MS. MYERS: We can work on clarifying that.

MS. CRONE: I think that would be helpful.

MR. DOOLEY: If we look at this section, there are a number of things that were taken from this section and stuck in the statute: The reduction of pay; reduction in hours; the deterioration in worksite safety; work location -- I mean, that language is definitely yours from here -- dissatisfaction with wages and stuff is gone, all that stuff; distance of travel; being in jail; accepting a job with another employer claimed as domestic responsibility; those were all listed as voluntary quits but they actually worked, because that's what they were referred to in the rule, as not as requalification, but as voluntarily quits.

MS. MYERS: Okay.

Now, 075, "Charges to the separating employer."

As we have mentioned earlier, an individual who -- under certain circumstances benefits are going to be going

to -- rather than being socialized costs or noncharged, they are going to go to one employer. If an individual quits work to accept a job with a new employer, 100 percent of benefits paid on the claims will be charged to that new employer when this new employer is the last employer in the based period and contribution paying.

Dale, you also will be happy to know that charges from the reimbursable will be going over.

MR. TUVEY: Yes and no.

MS. MYERS: Okay.

MR. TUVEY: A question about that. Is there any necessity or is it simply a policy decision that the subsequent employer, the most recent separating employer, has to be a base year employer.

MS. MYERS: Yes. It's in the statute. And I know it wasn't intended, but the way the statute is worded, when the separating employer is a contribution-paying, base year employer.

MR. TUVEY: Well, could that not be interpreted as -- does it have to be a contribution to the base year, you know, of that employee? But I think as a contribution-paying employer, it says, i.e, a taxable employer, but it doesn't necessarily have to be in that claimant's base year.

The reason I'm asking about this is because what

happens is -- one of the things this is such a grind is somebody will be working for an employer for a long time quits and takes, quote, "bona fide," unquote, job with somebody else for a very brief period of time, gets laid off, and all of a sudden the old employer gets stuck with it when, I'll say, the employer of convenience, which is actually what happens, be it a temporary help agency or a brother-in-law, and he purges the disqualification and all of a sudden the poor long-term employer gets stuck in, basically, a scam. And this doesn't do anything to that because the most recent employer is not a base year employer.

MS. MYERS: I understand that that was the intent.

MR. TUVEY: But when I think the interpretation is this is a contribution-paying employer, that doesn't have to be a contribution to that person's base year, but he is still taxable.

MS. MYERS: I guess I'm not clear what meaning is attached when it says base period.

MR. DOOLEY: When you say a base period employer, it kind of minimizes the opportunity for the scenario that you are talking about, Dale, where somebody takes just a short, brief job just so that they can then be laid off. Because if they have to be a base period employer, there has to be some substance in terms of the length of employment. If you

took out the base period, you would be more likely to run the shorter term.

MR. TUVEY: That's what we are trying to do.

MS. MYERS: My understanding is they are trying to get two employers -- for example, the example Gina gave was employers come in, open a big warehouse store, hire a whole bunch of employees away from other jobs, and after things shake out, they lay off a bunch of them. And that first employer is getting -- could get charged, although they can get relief of charges. They can request a relief of charges. But this section, I think, wanted to not have them socialized to go to that employer.

One of the earlier drafts we saw didn't have the language of base period employer, and it was added in a final version, and it ended up changing the intent, which I know was not consistent with what some people in the

employer community thought was going to occur, but it does clearly say contribution-paying, base year employer. It's Section 21 of the legislature.

MS. PEREZ: 69 percent of the last employers are last employers.

MS. MYERS: Page 30 of the legislation. When the eligible individual's separating employer is a covered contribution-paying, base year employer benefits paid to the eligible individual should be charged to the experienced

rating account only of the individual's separating employer.

MR. DOOLEY: Isn't it problematic for the department?

MS. MYERS: If we don't have base periods, yes. Right now, we don't have a mechanism for charging employers that

are outside of the base period. And that was one of our early comments on the bill, and so possibly that got put back in just because of that. I know I talked to Cliff about it.

MR. DOOLEY: It catches about 70 percent of the separating employers, where it didn't before.

MR. TUVEY: Not the most egregious ones. That is the problem.

MR. DOOLEY: Right. That may be true. But I think the fact that the legislation was looking to close or make the separating employer pay versus socializing the cost, you caught 70 percent of what used to be socialized.

MS. MYERS: And subsection (3), we can't move certain wages from their employer to the other separating employer in certain circumstances.

For example, if they had wages in their base period in

Oregon, we are not going to move those Oregon wages to Washington. I mean, that's against the interstate contract. The wages go to the state in which they were earned. The charges go to the state in which those wages were earned. Also government employers or the US military, we can't say,

federal government, "You are liable for 100 percent of the changes on this claim because of our state law." And similarly, we aren't going to move the charges from the federal government to the state employer. Those are covered under other provisions of federal law.

And the final rule that we have to discuss here, a new one, is simply the law change says that when an employer knowingly misrepresents the amount of their payroll and the

department has to audit them, we are eligible to cover our audit expenses and the costs of collection. And we have just included that in the rule that the cost would be included.

MR. TUVEY: Maybe you should include the cost to audit the claimants when you have to cover their work search.

MS. MYERS: Okay.

Thank you very much for coming. If you have additional comments that you didn't think of today, feel free -- you all have my e-mail.

MR. DOOLEY: You guys have done a fantastic job.

MR. SEXTON: Yeah, really.

MR. TUVEY: For what you have to work with.

MS. MYERS: Thank you. And thanks for coming out today.

(Whereupon, at 5:10 p.m., the

proceedings concluded.)

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